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HAWTHORN AND LAVENDER:

SONGS AND MADRIGALS.

BY W. E. HENLEY.

ENVOY.

My songs were once of the sunrise:
They shouted it over the bar;
First-footing the dawns, they flourished,
And flamed with the morning star.

My songs are now of the sunset:
Their brows are touched with light,
But their feet are lost in the shadows
And wet with the dews of night.

Yet for the joy in their making
Take them, O fond and true,
And for his sake who made them
Let them be dear to You.

I.

A sigh sent wrong,
A kiss that goes astray,
A sorrow the years endlong—
So they say.

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So let it be—
Come the sorrow, the kiss, the sigh!
They are life, dear life, all three,
And we die.

II.

It came with the year's first crocus
In a world of winds and snows;
Because it would, because it must,
Because of life and time and lust;
And the year's first crocus served my turn
As well as the year's first rose.

The March rack scurries and hectors,
The March dust heaps and blows;
But the primrose flouts the daffodil,
And here's the patient violet still;
And the year's first crocus brought me luck,
So hey for the year's first rose!

III.

The good Southwest, on wreck-worn wings,
Comes shepherding the good rain;
The brave sea breaks, and glooms, and swings,
A wavering, gleaming plain.

Sound, sea of England, sound and shine,
Blow, English wind, amain,
Till in this old, gray heart of mine
The spring need wake again!

IV.

In the red April dawn,
In the wild April weather,
From brake and thicket and lawn
The birds sing altogether.

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The look of the hoyden Spring
Is pinched and shrewish and cold;
But altogether they sing
Of a world that can never be old:

Of a world still young—still young!—
Whose last word won't be said,
Nor her last song dreamed and sung,
Till her last true lover's dead!

V.

Shadow and gleam on the downland
Under the low, spring sky,
Shadow and gleam in my spirit—
Why?

A bird, in his nest rejoicing,
Cheers and flatters and woos,
A rich voice flutters my fancy—
Whose?

And the humor of April frolics
And bickers in blade and bough—
O, to meet for the primal kindness
Now!

VI.

The April sky sags low and drear,
The April winds blow cold,
The April rains fall gray and sheer,
And yeanlings keep the fold.

But the rook has built, and the thrushes throng,
And over the faded lea
The sky-lark scatters his rocketing song;
And he is the bird for me!

For he sings as if, from his watchman's height,
He saw, this blighting day,
The far vales break into color and light
From the banners and arms of May.

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VII.

Deep in my gathering garden
A gallant thrush has built;
And his quaverings on the stillness
Like light made song are spilt.

They gleam, they glint, they sparkle,
They glitter along the air,
Like the song of a sunbeam hiding
In a tangle of red-gold hair.

And I long, as I laugh and listen,
For the angel-hour that shall bring
My part, preordained and appointed,
In the miracle of spring.

VIII.

I talked one mid-night with the jolly ghost
Of a gray ancestor, Tom Heywood hight;
And, "Here's," says he, his old heart liquor-lifted—
"Here's how we did when Gloriana shone."

All in a garden green
Thrushes were singing;
Red rose and white between,
Lilies were springing;
It was the merry May;
Yet sang my Lady:—
"Nay, Sweet, now nay, now nay!
I am not ready."

Then to a pleasant shade
I did invite her;
All things a concert made,
For to delight her;
Under, the grass was gay;
Yet sang my Lady:—
"Nay, Sweet, now nay, now nay!
I am not ready."

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IX.

The west a glory of green and red and gold,
The magical drifts to north and eastward rolled,
The shining sands, the still, transfigured sea,
The wind so light it scarce begins to be,
As these long days unfold a flower, unfold
Life's rose in me.

Life's rose—life's rose! Red at my heart it glows—
Glows and is glad, as in some quiet close
The sun's spoiled darlings their gay life renew!
Only, the clement rain, the mothering dew,
Daytide and night, all things that make the rose,
Are you, dear, you!

X.

After the grim Daylight,
Night—
Night and the stars and the sea!
Only the sea and the stars
And the star-shown sails and spars—
Naught else in the night for me!

Over the northern height,
Light—
Light and the dawn of a day
With nothing for me but a breast
Labored with love's unrest,
And the irk of an idle May!

XI.

Love, which is lust, is the lamp in the tomb.
Love, which is lust, is the call from the gloom.

Love, which is lust, is the main of desire.
Love, which is lust, is the centric fire.

So man and woman will keep their trust,
Till the very Springs of the Sea run dust.

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Yea, each with the other will lose and win,
Till the very Sides of the Grave fall in.

For the strife of love's the abysmal strife,
And the word of love is the Word of Life.

And they that go with the Word unsaid,
Though they seem of the living, are damned and dead.

XII.

I took a hansom on to-day
For a round that I used to know—
That I used to take for a woman's sake
In a fever of to-and-fro.

There were the landmarks one and all—
What did they stand to show?
Street and square and river were there—
Where was the antient woe?

Never a hint of a challenging hope,
Nor a hope laid sick and low,
And a longing dead as its kindred sped
A thousand years ago!

XIII.

Why do you linger and loiter, O most sweet?
Why do you falter and delay,
Now that the insolent, high-blooded May
Comes greeting and to greet?
Comes with her instant summonings to stray
Down the green, antient way—
The leafy, still, rose-haunted, eye-proof street!—
Where true lovers each other may entreat,
Ere the gold hair turn gray?
Entreat, and fleet
Life gaudily, and so play out their play,
Even with the triumphing May—
The young-eyed, smiling, irresistible May!

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Why do you loiter and linger, O most dear?
Why do you dream and palter and stay,
When every dawn, that rushes up the bay,
Brings nearer, and more near,
The Terror, the Discomforter, whose prey,
Beloved, we must be? Nor prayer nor tear
Lets his arraignment; but we disappear,
What time the gold turns gray,
Into the sheer,
Blind gulfs unglutted of mere Yesterday,
With the unlingering May—
The good, fulfilling, irresponsible May!

XIV.

Look down, dear eyes, look down,
Lest you betray her gladness.
Dear brows, do naught but frown,
Lest men miscall my madness.

Come not, dear hands, so near,
Lest all besides come nearer.
Dear heart, hold me less dear,
Lest time hold nothing dearer.

Keep me, dear lips, O keep
The great last word unspoken,
Lest other eyes go weep,
And other lives lie broken!

XV.

Hither, this solemn eventide,
All flushed and mystical and blue,
When the late bird sings
And sweet-breathed garden-ghosts walk sudden and wide,
Hesper, that bringeth all good things,
Brings me a dream of you.
And in my heart, dear heart, it comes and goes,
Even as the south wind lingers and falls and blows,

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Even as the south wind sighs and tarries and streams,
Among the living leaves about and round;
With a still, soothing sound,
As of a multitude of dreams,
Of love, and the longing of love, and love's delight,
Thronging, ten thousand deep,
Into the uncreating night,
With semblances and shadows to fulfil,
Amaze, and thrill
The strange, dispeopled silences of sleep.

XVI.

Poplar and lime and chestnut
Meet in a living screen;
And there the winds and the sunbeams keep
A revel of gold and green.

O, the green dreams and the golden,
The golden thoughts and green,
This green and golden end of May
My lover and me between!

XVII.

This is the moon of roses,
The lovely and flowerful time;
And, as white roses climb the wall,
Your dreams about me climb.

This is the moon of roses,
Glad and golden and blue;
And, as red roses drink of the sun,
My dreams they drink of you.

This is the moon of roses!
The cherishing southwest blows,
And life, dear heart, for me and you,
O, life's a rejoicing rose.

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XVIII.

The downs, like uplands in Eden,
Gleam in an afterglow,
Like a rose-world ruining earthwards—
Mystical, wistful, slow!

Near and afar in the leafage,
That last glad call to the nest!
And the thought of you hangs and triumphs
With Hesper deep in the west!

Till the song and the light and the color,
The passion of earth and sky,
Are blent in a rapture of boding
Of the death we should one day die.

XIX.

Your feet as glad
And light as a love's homing wings, you came—
Came with your sweets to fill my hands,
My sense with your perfume.

We closed with lips
Grown weary and fain with longing from afar,
The while your grave, enamored eyes
Drank down the dream in mine.

Till the great need
So lovely and so instant grew, it seemed
The embodied Spirit of the Spring
Hung at me, heart on heart.

XX.

A world of leafage murmurous and a-twinkle;
The green, delicious plenitude of June;
Love and laughter and song,
The blue day long,
Going to the same glad, golden tune—
The same glad tune!

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Clouds on the dim, delighting skies a-sprinkle;
Poplars black in the wake of a setting moon;
Love and langor and sleep
And the star-sown deep
Going to the same good, golden tune—
The same good tune!

XXI.

These glad, these great, these goodly days
Bewildering hope, outrunning praise,
The Earth, renewed by the great Sun's longing,
Utters her joy in a million ways!

What is there left, dear heart and true—
What, for us and our love to do?
What but to take this mighty summer
As it were made for me and you?

Take it and live it beam by beam,
Motes of light on a gleaming stream,
Glare by glare and glory on glory
Through to the ash of this flaming dream!

XXII.

Come by my bed,
What time the gray ghost shrieks and flies;
Take in your hands my head,
And look, O look, into my failing eyes;
And, by God's grace,
Even as He sunders body and breath,

The shadow of your face
Shall pass with me into the run
Of the Beyond, and I shall keep and save
Your beauty, as it used to be,
An absolute part of me,
Lying there, dead and done,
Far from the sovran bounty of the sun,
Down in the grisly colonies of the Grave.

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XXIII.

Since those we love and those we hate,
With all things mean and all things great,
Pass in a desperate disarray
Over the hills and far away:

It must be, dear, that, late or soon,
Out of the ken of the visiting moon,
We shall abscond with Yesterday
Over the hills and far away.

What does it matter? As I deem,
We shall but follow as brave a dream
As ever smiled a wanton May
Over the hills and far away.

We shall remember, and, in pride,
Fare forth, fulfilled and satisfied,
Into the land of Ever-and-Aye,
Over the hills and far away.

XXIV.

The time of the silence
Of birds is upon us:
Rust in the chestnut's leaf,
Dust in the stubble,
The turn of the year
And the call to decay.

Stately and splendid,
The Summer passes:
Sad with satiety,
Sick with fulfilment;
Spent and consumed,
But august 'till the end.

By wilting hedgerows
And white-hot highways,
Bearing its memories
Even as a burden,
The tired heart plods
For a place of rest.

W. E. HENLEY.

February-August, 1899.

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INTERNATIONAL ARBITRATION AND THE PEACE CONFERENCE AT THE HAGUE.*

BY F. DE MARTENS, DELEGATE FROM RUSSIA TO THE CONFERENCE AT THE HAGUE.

THE Peace Conference, called by the generous invitation of His Majesty the Emperor of Russia, has provoked most divergent opinions as to its aim and as to its definite results.

Two opinions are particularly prominent: on the one hand, the opinion of Utopians; on the other hand, the opinion of practical statesmen. The Utopians, the most dangerous enemies of the progress of international law, expected from this Conference a general disarmament of all the Powers, eternal peace and the abolition of war. Practical statesmen, on the contrary, were convinced that this Conference would be productive of no practical result whatever, since the purpose pursued was too lofty, too complicated, and beyond the limits of the real life of states.

It seems to me that neither of these opinions is in accord with the fundamental idea which brought about the meeting of this Conference.

The Conference at The Hague had, as its practical aim, not the general disarmament of nations nor the abolition of war, but rather the examination and study of the conditions under which the great Powers of Europe and of the entire world live, so far as military force is concerned. The aim of this Conference was to call the attention of the Governments to the heavy burdens to which all military nations are subjected in anticipation of an international conflict. The Peace Conference was to examine whether, in the conditions under which the nations of the

* The author of this essay was one of the Delegates from Russia to the Conference at The Hague. For his services as arbitrator, for which he has been several times chosen by civilized states in cases of litigation, there has been conferred upon him the most honorable title, "Lord Chief Justice of Christendom."

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civilized world now actually live, it is possible to limit armaments and the preparations for war, which in some cases absorb half of the ordinary budgets of the states. This Conference had not and could not have as its aim either the disbandment of armies or of fleets, or interference with the sovereignty of nations in the defense of their national and political interests.

The Conference at The Hague was thus in a position to propose either measures looking toward a limitation of the armed forces of the nations, or other measures preparing the way for the attainment of this important purpose. In other words, the Conference at The Hague could either propose the limitation of armed forces, with a view to securing arbitration as the most practical means of regulating international conflicts, or it could propose arbitration, in the first place, and leave the solution of the larger question of disarmament to the future. In the first case, the effort would be through disarmament to reach arbitration as the legal means for regulating international conflicts; in the second case, by proclaiming arbitration first, disarmament, perhaps in the distant future, might be reached.

That was the alternative submitted to the Conference at The Hague: and the Conference chose the second way. That is to say, it studied international arbitration as the regular means for adjusting conflicts between nations, reserving for the future the question of the limitation of armaments in different countries.

From the very earliest sessions of the Conference it was decided that three great problems should be examined:

(1.) The question of disarmament.

(2.) The declaration of Brussels (1874) concerning the laws and customs of war, and the application of the Convention of Geneva (1864) to naval warfare.

(3.) The question of peaceful means of regulating conflicts between nations; friendly offices, mediation and arbitration.

The Conference appointed three different commissions to study these three problems.

The first commission, whose task it was to examine the question of the limitation of armed forces, was under the presidency of M. Beernaert, the eminent Belgian statesman.

The second commission, which was to examine the declaration of Brussels (1874), and the Red Cross in time of naval war, was under the presidency of the author of this article.

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The third commission, charged with the examination of the question of arbitration, had for its president M. Léon Bourgeois, first Plenipotentiary of France.

These three commissions finished their labors towards the end of the month of July.

The first commission demonstrated, by its labors and its very serious discussions, that the time had not yet come for limiting the military forces of the nations on land and sea by an international compact, and that this question should be left to the future, which must needs give attention to it. The first commission, in the name of all the members of the Conference, formulated two resolutions, which bear excellent testimony that the question of limitation of armaments, as raised by Russia, was unanimously considered to be a question of the day, a subject for serious examination and careful reflection, but that the time has not come to solve it.

The second commission accomplished its task in full. It revised the declaration of Brussels (1874) concerning the laws and customs of war on land, and the whole Conference expressed its approbation of the project of a new Convention. The ten articles, also, concerning the Red Cross in time of naval war were adopted by the Conference and have been signed, at the present date, by sixteen Powers.

The third commission, whose task it was to examine all questions concerning friendly offices, mediation and arbitration, drew up a document of fifty-six articles, which presents a complete *résumé* of all questions in reference to arbitration as a legal and regular means of adjusting conflicts between nations. Without a doubt, this agreement concerning international arbitration is an eminently practical result. It gives to those Powers which seriously desire to avoid war between nations a means of attaining that object by the method devised for them by the Conference at The Hague.

I.

In conformity with the message of the Emperor of Russia, by which the states were invited to unite their efforts towards the maintenance of a general peace, the Powers represented at the Conference at The Hague were to investigate all the means whereby this exalted object might be attained.

To give a fair idea of the way in which the Conference at

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The Hague decided to enter upon the solution of the question raised by Russia, it is necessary to present, in a few words, a historic review of the labors of the Conference, so far as concerns international arbitration.

Since it was Russia that called the Conference, it was natural that she should also suggest a basis for the discussions.

In the sessions of the Conference of May 26th, in the name of the Imperial Government, the Russian delegation communicated to the Conference a draft of an agreement in regard to friendly offices, mediation, international commissions of inquiry and arbitration. The plan of the Russian delegation comprised fifty-two articles. It did not constitute a definite agreement, but presented "the elements" of such an agreement.

At the same session the first Plenipotentiary of England, Sir Julian Pauncefote, in a remarkable *mémoire,* squarely proposed the question of the creation of a permanent tribunal of arbitration. The delegation from the United States of America submitted a similar proposition, expressing the desire that arbitration might become a normal method of settling international conflicts.

In examining these propositions, all the members of the Conference must have been convinced that there was absolutely no fundamental difference between the propositions. The Russian, English and American propositions were permeated by the same ideas upon the one point relating to the permanent court of arbitration; they had the same object in view and indicated the same way to the attainment of this object. But, since the Russian propositions were presented in the name of the Government which had taken the initial steps towards this Conference, and since these propositions made up a complete *ensemble* in the form of a document of fifty-two articles, it was most natural for the Conference to decide that they should serve as a basis for discussion. On the other hand, an examination of these different propositions by a gathering of more than a hundred delegates from the Powers was evidently impracticable. For this reason the third commission decided to nominate a committee, composed of a few members only, and these the most competent in such matters, for the purpose of amalgamating the different propositions that had been made, and of preparing for the commission and for the Conference a complete report on all the questions referring to international arbitration.

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In this committee, upon which all the labor of the third commission was concentrated, the different propositions made were submitted to a most conscientious examination. The draft of agreement, elaborated by this committee of investigation, was presented to the third commission at a full meeting, and later on to the Conference itself. M. le Chevalier Decamp presented the report of the committee of investigation and of the third commission, which was unanimously approved by the Conference at The Hague.

Before entering upon the examination of the arbitration convention adopted by the Conference at The Hague, it will be useful to explain in a few words the purpose and object of the propositions made by the Government of Russia, which were adopted as a basis for the labors of the Commission. These Russian propositions comprised four different parts.

In the first place, their object was to regulate the question of friendly offices and mediation.

The fundamental idea of this chapter on friendly offices and mediation was this: the Powers represented at the Conference at The Hague are to recognize the moral and practical necessity of not resorting to force in cases of conflict except in cases where neither friendly offices nor mediation nor arbitration could settle the difficulty.

According to the first article of the Russian project, it was said "that for the purpose of preventing resort to force as far as possible in international affairs, the signatory Powers agree to direct all their efforts towards bringing about, by peaceful means, the adjustment of conflicts which may arise between them." From this point of view, in case of grave differences or of conflict, "before appealing to arms, the signatory Powers should have recourse, as far as circumstances permit, to the friendly offices or mediation of one or more friendly Powers."

In a case where the situation of Powers in conflict does not allow them to agree upon the choice of a mediating Power, neutral Powers may offer mediation of their own accord.

So far as concerns arbitration the Russian propositions, as was also the case with the question of friendly offices and mediation, maintained an attitude of due respect for the national sovereignty of states.

Russia proposed international arbitration in questions of legal

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aspect, and, in the first place, in questions concerning the interpretation and application of treaties in force. The Powers in conflict are to be entirely free to resort to arbitration, to establish tribunals of arbitration in all questions in which "neither national interests nor national honor" are involved.

These principles of voluntary, spontaneous arbitration were not violated by the tenth and eleventh articles of the Russian propositions, in virtue of which arbitration was recognized as obligatory in some exceptional cases.

In order that arbitration might become a regular means, organized to meet the requirements of conflicts between nations, Russia proposed the creation of a permanent tribunal of arbitration, during the session of May 26th. It was not the object of this tribunal of international arbitration in any way to interfere with the full liberty of Governments, in cases where these Governments desired to create special tribunals.

In order that these permanent or special tribunals of arbitration might act according to the same rules of procedure, the Government of Russia proposed a code of arbitration in twenty-six articles. This code was elaborated on the basis of the practice of several recent tribunals of arbitration.

It should be added that this code of arbitration was proposed by the author of this article to the international tribunal of arbitration which met at Paris to adjust the conflict between Great Britain and the United States of Venezuela, of which the author of this article was president, and it was imposed by that tribunal upon the two Powers in litigation as an obligatory regulation.

The Russian propositions also contained a chapter which produced considerable misunderstanding and discussion at the Conference at The Hague a little later on. It was the chapter on International Commissions of Inquiry.

The object of these International Commissions of Inquiry is to prevent the development of a conflict between nations by an examination *in loco* of the circumstances which brought about the conflict. These Commissions of Inquiry may be considered as a sort of safety-valve, designed to set bounds to the discussions of the press, of the public and of representative bodies.

Such were the propositions submitted by Russia to the Conference at The Hague, and in the second place to the third commission.

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II.

Without going into the details of all the discussions which took place at the Conference at The Hague in reference to arbitration, it seems necessary to give a brief summary of the definite results obtained.

After very conscientious work on the part of the Committee of Investigation and of the third commission, the Conference at The Hague finally approved of the plan of agreement for the peaceful adjustment of international conflicts presented to it by the third commission.

I consider it useful to give a general survey of the substance of that agreement, bringing out only such stipulations as aroused difficulties or more or less heated discussions.

The work of the Conference, so far as international arbitration is concerned, consists of an agreement of sixty-one articles, which agreement has at the present date been signed by fifteen Powers; and which will be definitively approved, it is to be hoped, by all the Powers represented at the Conference at The Hague.

Let us summarize this agreement and stop to note, in the first place, the first chapter, the object of which is to regulate friendly offices and mediation as means of giving a peaceful solution to international conflicts.

The principles adopted by the Conference concerning friendly offices and mediation emphasize the moral duty, so to speak, of the signatory Powers to resort, so far as circumstances permit, to the friendly offices or to the mediation of one or more of the Powers. Like the Russian project, the Conference at The Hague directs that Powers not involved in the conflict may offer, of their own free will, their friendly offices and their mediation to the states in litigation. It is recognized, also, that the right to offer friendly offices or mediation belongs to the states not involved in the quarrel, even during the course of hostilities.

The exercise of this right shall never be considered as an unfriendly act by either of the parties in litigation.

What constitutes the rôle of a mediator? The mediator ought to reconcile opposing claims, pacify resentment, and frame a compromise for Powers which find themselves at variance.

If these principles be compared with international practice it may be confidently said that the difference between them and the practice in these matters, is not very great. For a long time,

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especially since the Congress of Paris (1856), the Powers have declared it to be a duty, in case of conflict, to have recourse to friendly offices and mediation. Yet it must not be forgotten that the stipulations of the Treaty of Paris (1856) had in view only certain particular cases, especially the entanglements within the domain of the Eastern Question; neither friendly offices nor mediation had been enunciated as general and normal means to avoid conflicts between nations. It is only at the Conference at The Hague that this general and almost morally obligatory character of friendly offices and mediation was recognized, for the first time, by all the Powers represented at the Conference.

There is another point in which the Convention of The Hague is fundamentally distinguished from other international stipulations on that subject. To the United States of America and to the delegation from that country to the Conference at The Hague belongs the honor of having extended the very narrow limits within which mediation has been hitherto practised. On motion of the representative of the United States of America, Mr. Holls, the Conference at The Hague adopted in the eighth article a "special mediation" in the following form:

> "In case of grave differences endangering peace, the states in conflict may respectively choose a Power to which they may intrust the mission of entering into direct communication with the Power chosen by the other side for the purpose of preventing the rupture of pacific relations.
>
> "During the existence of this mandate, the term of which, unless otherwise ordered, shall not exceed thirty days, the states in litigation shall cease from all direct communication on the subject of the conflict, which shall be considered as submitted exclusively to the mediating Powers. These shall direct all their efforts towards adjusting the difficulty.
>
> "In case of an actual interruption of pacific relations, these Powers shall remain charged with the common mission of profiting by every opportunity to re-establish peace."

The idea of this "special mediation," as well explained by its author at the meeting of the Committee of Investigation, is the same as the idea of a duel between individuals: in the same manner as, upon the eve of an encounter regarded as fatal, instead of leaving the quarrel open to the principals, it is preferable to yield the discussion of controverted points for the moment to witnesses or seconds, possessing respectively the confidence of each party and less subject to the sway of passion. "Special

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mediation" on the part of such witnesses or seconds affords the great advantage of avoiding the necessity of a perfect understanding, so difficult in the choice of a single or common mediator.

Conformably to this "special mediation," the Powers in conflict must cease from all direct communication with each other in reference to the object in dispute, and leave it to the witnesses or seconds to enter into direct communication one with the other, to investigate the circumstances under which the quarrel came about and to propose to the Powers in conflict a peaceful solution in the name of the two mediators.

These mediators are not, properly speaking, arbitrators; they are Powers, which, for the sake of peace and friendly relations among nations, take it upon themselves to clear away misunderstandings which menace the peace of the world.

Finally, in regard to this chapter on mediation, it should be noted that the acceptance of such mediation shall not have the effect, unless otherwise prescribed, of interrupting, retarding or impeding mobilization and other measures preparatory to war.

The second subject under consideration at the Conference at The Hague was the question of International Commissions of Inquiry.

The author of this essay was enabled to explain to the Conference at The Hague the practical value of this proposition. He recalled cases—like that of Schnoebelé—where a quarrel arises between two states, in connection with some frontier incident, or with a criminal act, such as the blowing up of the American warship, the "Maine," in the port of Havana. The facts relative to frontier incidents are not always clear; it is not practicable to decide whether they have taken place on this side of the frontier or on that; it is doubtful upon which authorities the blame should be placed in cases of violation of territorial sovereignty of neighboring states. In such cases public opinion becomes heated, the more so since such an incident is usually unexpected; public opinion is ill-informed; it does not know the origin and the true causes of the conflict; it is at the mercy of the impressions of the moment; the chances are much in favor of such ignorance acting as an irritant upon the spirit of the two contesting nations; and thus the conflict may become a reason for breaking off diplomatic relations and even a cause of war.

In such cases it is absolutely necessary that the truth in

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reference to the causes of the incident should be known; and for this purpose it becomes the duty of the Powers, between whom the difficulty has arisen, to send to the spot a commission composed of members chosen by the two parties. This commission should have but one object: to establish the facts and to make a report to the Governments interested. It rests with these Governments to take further steps after considering the report.

From this point of view, International Commissions of Inquiry are not innovations, for the Powers have availed themselves of them on various occasions, for example in the Orient; but for such Commissions of Inquiry a stable and legitimate organization should be secured.

These propositions met with a very sympathetic reception at the hands of the Committee of Investigation and of the Conference at The Hague, although there was some misunderstanding as to the method of procedure, and even as to the objects of these Commissions of Inquiry.

It was said—especially did the representatives of the small states of the Balkan Peninsula, Roumania, Servia, Bulgaria and Greece, raise the objection—that these Commissions of Inquiry would have but one object, namely, to attack the sovereignty of these small states; that the great Powers would be constantly imposing these Commissions of Inquiry upon them; that the results obtained by the Commissions of Inquiry would always be unfavorable to the smaller Powers and favorable to the great Powers, etc. On the other hand, it was said that these Commissions of Inquiry would be, so to speak, arbitration, since the report which they would present would amount to a decree of arbitration.

The delegation from Russia sought to prove that these Commissions of Inquiry would be of enormous importance to the smaller Powers especially; for to the small Powers the right would be given, in all cases of conflict, to demand that such Commissions of Inquiry should be instituted. A great Power could always utilize its strength and the means at its disposition to take such measures as seemed necessary from the incipiency of the conflict; but if the great Powers were under moral obligation to establish Commissions of Inquiry before taking such steps, a guarantee would be given to the small Powers, which they do not now possess.

On the other hand, the report of such a Commission has not

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the character of a judgment by arbitration; the Powers in litigation, which have established such a Commission, would, nevertheless, remain free to follow up the report presented by this Commission, as they saw fit; the object of the Commissioners is not to judge of the affair, but simply to present the results of a conscientious study of the circumstances under which the quarrel arose.

These considerations met with unanimous acceptance on the part of the members of the Conference, in which acceptance the delegates of the small states of the Balkan Peninsula joined; and in its Articles of Agreement the Conference at The Hague adopted the Russian proposition, with a few changes which in no wise alter the practical character of this new international institution.

According to the original propositions, the Russian propositions, the Powers are under obligation to institute such Commissions. At the request of the small Powers, the Conference at The Hague changed this obligatory form of the sentence in such a way as to read that the signatory Powers "consider it useful" that parties which have been unable to agree by the diplomatic way, shall, "as far as circumstances permit," institute an International Commission of Inquiry, whose task it shall be to facilitate the settlement of differences by bringing out the facts of the case, by means of an impartial and careful investigation. The Commissions of Inquiry shall be instituted by the Powers in litigation, who shall name two members of this Commission; a neutral Power may be invited to nominate the president of the Commission, who, by his vote, shall give the final solution to the questions raised.

These Commissions of Inquiry should proceed according to the rules adopted in all cases of investigation—that is to say, by hearing testimony on both sides. After the Commission has finished its investigation with the assistance of the Powers in litigation, it shall render a report to the parties who made the appointments. "The report is limited to a statement of fact and is not in the nature of a decree of arbitration."

We now pass on to the examination of the decisions of the Conference at The Hague as to arbitration itself.

The general principles by which the Conference at The Hague was guided are as follows:

International arbitration is recognized and legalized. Its

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object is to adjust difficulties which may arise between two states on questions of a judiciary order, and, in the first place, on questions of interpretation or application of international treaties or agreements. The signatory Powers have recognized this as the most efficacious and at the same time the most equitable means of adjusting international difficulties.

All the Powers, even those which have signed the treaty, remain free to conclude special treaties for developing international arbitration as the most just and equitable means of regulating conflicts between them.

Under these conditions the sovereignty of even the signatory Powers was respected in every way by the Conference at The Hague.

But, as we said above, these general principles differ on one point from the original propositions made by Russia.

In the Russian propositions, arbitration was recommended in two forms: optional arbitration and obligatory arbitration. Optional arbitration depends entirely on the good will of the Powers; obligatory arbitration was recommended by Russia for some special cases which are at present more or less provided for by different international treaties.

Russia proposed to recognize the obligation of the signatory Powers, to resort to arbitration in cases of differences having reference to pecuniary damages sustained by a state or the territory under its jurisdiction as a consequence of illicit action or of negligence on the part of another state or the territory under its jurisdiction; in cases of disagreements referring to the application of postal, telegraph or railroad treaties; of disagreements referring to the protection of literary, artistic or industrial property, to treaties on successions, etc. In such cases, according to the Russian proposition, the signatory Powers would have been obliged to resort to arbitration, and this obligation should have been confirmed by the Conference at The Hague.

At the beginning of the labors of the Conference at The Hague, the idea of obligatory arbitration met with a sympathetic reception, and was generally approved and considered to be the first step along the way already entered by several Powers by means of special treaties. But Germany thought it necessary to oppose the proposition energetically, and the Conference at The Hague, influenced by the spirit of conciliation and with a view

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to unanimous agreement, rallied about the German idea: obligatory arbitration was completely set aside by the Conference.

Having approved of the general principles of arbitration, the Conference had to place itself on record as regards the Russian, English and American proposition concerning a permanent tribunal of arbitration. The idea of a permanent tribunal of arbitration is not new; all the advocates and friends of arbitration, as a pacific means of avoiding conflict between nations, have always had in mind the necessity of organizing arbitration as a universal and judiciary procedure for cases of litigation between nations.

In the session of May 26th, Russia had expressed this idea in its principles. But the honor of having put the question in a categorical and detailed manner belongs to the first delegate of England, Sir Julian Pauncefote, who submitted to the Conference a project for instituting a permanent tribunal of arbitration, the basic thought of which is as follows:

Every signatory Power should designate an equal number of arbitrators; the names of these arbitrators shall be inscribed upon a general list, as members of the permanent tribunal of arbitration. This permanent tribunal shall be called together in every case of conflict between the signatory Powers, if they manifest a desire for such a call. At The Hague an "international bureau," a sort of secretary's office, shall be established, to serve as a registry office for the international tribunal; this office shall be furnished for administrative services. Finally, a "permanent council of administration" shall be created at The Hague to control the workings of the international bureau.

When the English delegation had submitted this project to the Conference, the delegation from the United States of America made a proposition in virtue of which a permanent bureau was to be established at The Hague, and it was proposed that the Court of Justice of each state nominate one member of the international tribunal. According to the American proposition, this tribunal of arbitration should be organized when nine Powers shall have signed the treaty.

The Russian proposition rested upon the same basis, as above mentioned.

Consequently the Conference at The Hague had before it three different propositions on the tribunal of arbitration; proposi-

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tions emanating from the three greatest Powers of the world. It was, of course, necessary to make a choice from these three propositions. The members of the Committee of Investigation decided unanimously that the basis for discussion on the organization of a permanent tribunal of arbitration should be, exclusively, the English proposition, which emanated from Sir Julian Pauncefote, the eminent English statesman, who, during all his life and his brilliant diplomatic career, had been a confirmed advocate of a permanent tribunal of arbitration.

We shall not here enter upon all the details of the discussions on this question. But it is necessary to note that the opposition made by Germany to the permanent tribunal naturally brought about a change, in some respects, in the disposition originally predominating in the Committee of Investigation and the Conference. The particular ideas of the German Empire being stated, it became necessary to make some sacrifices. But if the provisions of the treaty of The Hague on the permanent tribunal of arbitration (which provisions had been adopted by Germany in principle) be examined, it would hardly be affirmed that the German ideas had completely changed the fundamental idea of a permanent tribunal; on the contrary, all the Powers, Germany included, have adopted and organized a permanent tribunal of arbitration under the name of the "Permanent Court of Arbitration."

The signatory Powers reserve the right, in case of conflict, to constitute among themselves a tribunal or court of arbitration. In case they consider it expedient to appeal to the "Permanent Court of Arbitration," they may do so on condition that they then submit to the provisions of the Arbitration-Treaty of The Hague.

The Permanent Court of Arbitration was organized in the following manner:

"Every signatory Power shall designate, within the three months following the ratification by them of the present act, four persons or more, of recognized competency in questions of international law, highly respected on the ground of morals, and disposed to accept the functions of arbitrators.

"The persons thus designated shall be entered, as members of the Court, upon a list to be sent to all the signatory Powers through the agency of the Bureau.

"Every change of the list of arbitrators shall, through the agency of the Bureau, be brought to the notice of the signatory Powers.

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"The same person may be designated by different Powers.

"The members of the Permanent Court of Arbitration are elected for a period of six years. They may be re-elected."

Besides this Court, an "International Bureau" is to be established at The Hague. This Bureau serves as a recording-office for the Court, and is the intermediary for all communications relative to all meetings of the Court. The Bureau preserves the archives and has the management of all the administrative affairs. The Governments bind themselves to communicate to the Bureau such laws, decrees and documents as may serve as a basis for the decisions rendered by the Court.

Lastly, there shall be constituted at The Hague a "Permanent Administrative Council," composed of the diplomatic representatives of the signatory Powers accredited at The Hague, and of the Minister of Foreign Affairs of the Netherlands, who shall hold the office of President.

This "Administrative Council" shall have charge of the establishment and organization of the International Bureau, which shall remain under its direction and control. Furthermore, the Permanent Administrative Council shall notify the Powers of the manner in which the Court is constituted and shall provide offices for it.

To understand the full import of this organization, it must be added that Powers in conflict, which decide to appeal to the Permanent Court of Arbitration to adjust a difficulty, will choose the arbitrators, to be called to form a Tribunal of Arbitration, which shall be competent to pass upon the differences which have arisen between them. In other words, the Powers in litigation not desiring to constitute a special tribunal of arbitration shall take the list of the arbitrators, constituting the "Permanent Court of Arbitration," and shall select from that list. When the Tribunal of Arbitration is made up, the Bureau is notified of the fact by the parties concerned, and the Tribunal meets upon the date set by these parties and enters upon the consideration of the matters submitted.

Before leaving this subject, it is absolutely essential to say a few words of a proposition made by Baron d'Estournelles, delegate from France, a proposition which took shape in the twenty-seventh article of the Treaty of The Hague, which says that "the signatory Powers consider it their duty, in case of serious con-

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flict arising between two or more among them, to recall to these that the 'Permanent Court' is open to them. The fact of thus recalling to the Powers in litigation the provisions of the present treaty and the counsel given—to appeal to the 'Permanent Court of Arbitration' in the highest interests of peace—shall be considered in no other light than as an act of friendly offices."

Despite the sympathetic purpose of this proposition, it caused considerable misunderstanding. The duty of the signatory Powers to recall to the conflicting Powers the existence of the "Permanent Court of Arbitration," and the fact of its being open to them, seemed to some to have the force of unwarranted interference and thus of a vexation to the Powers.

Finally, after a very animated discussion, all the members of the Conference recognized that the French proposition was not only sympathetically conceived, but also that it encroached in no wise upon the sovereign rights or the national independence of the states, and the article was adopted by the sixteen Powers which, up to the present time, have signed the Treaty.

A few words remain to be said on the provisions adopted by the Conference at The Hague as to the procedure in cases of arbitration. Hitherto the Powers in litigation have always confined themselves to determining, in their mutual agreement, the object in litigation, organizing a tribunal of arbitration, determining its competency and the obligatory force of its decision; but all points of procedure were the vaguest of the vague. No tribunal of arbitration (such as that on the Alabama Claim in 1873, or the tribunal in Paris in 1892, *à propos* of the Behring Sea Fisheries) had any code of procedure. The total lack of such a code proved very inconvenient. Questions were brought up before these tribunals of arbitration for the solution of which these tribunals possessed no rule, no basic principles; and the questions thus raised not only provoked misunderstandings, but occupied much of the time of these tribunals.

This great inconvenience was recognized as a flaw in international arbitration as early as 1874 by the "Institute of International Laws." This society, composed of the most prominent writers on this branch of jurisprudence, had made a code of rules for tribunals of arbitration; but, despite its great scientific merits, this code of rules did not always provide means of meeting the difficulties presented by practical arbitration.

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The fundamental provisions of the code of procedure adopted by the Conference at The Hague are as follows: The Powers having recourse to arbitration shall sign an international act or compromise, in which shall be clearly set forth the objects of contention and the extent of the powers vested in the arbitrators. The Powers, at their option, may designate the arbitrators; may make a choice from the Permanent Court of Arbitration; may apply directly to that court, or may establish a special tribunal. In case the contending Powers do not come to a special agreement as to the constitution of a tribunal of arbitration, it is recommended that each side name two arbitrators and let these choose one additional. In case of a tie vote, the choice of the additional arbitrator is left to a neutral Power, to be designated by the Powers in contention. If the choice of a neutral Power cannot be agreed upon by the contending Powers, each side shall name a Power and the choice of the additional arbitrator shall be left to these two Powers.

The place of meeting for the Tribunal of Arbitration thus constituted shall be designated by the parties in contention; in the absence of a definite appointment, the special Tribunal of Arbitration meets at The Hague.

Procedure in arbitration involves two distinct phases: one, instruction; the other, debate.

Instruction consists of communications made by the respective agents of the contending Powers to the members of the tribunal and to the opposing party; of all printed and written records and all documents referring to the case.

Debates before the tribunal of arbitration shall consist of verbal elaborations of the contentions held.

When instructions have closed, the tribunal has the right to exclude from debate all new records or documents which one side may wish to submit without the consent of the other. The tribunal may require that the agents of the parties contending shall produce all records and may demand all necessary explanations. The agents or counsels of the parties are authorized to present to the tribunal orally all materials which they consider useful in the defense of their cause. The members of the tribunal have the right to put questions to the agents or counsels of the parties and to demand elucidation of doubtful points. Neither the questions so put nor the remarks made by members of the

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tribunal during the course of the debate shall be regarded as the expression of an opinion on the part of the tribunal in general or of the interrupting member in particular.

Furthermore, the code of arbitration has settled one question of great importance, and that is the question as to who shall have the right to decide upon the competency of the tribunal itself. It will be remembered that it was on this point that the Geneva Arbitration on the Alabama Claim failed. But this question is solved in the forty-eighth article of the treaty, in which it is stated that the tribunal is authorized to determine its competency by interpreting the compromise along the line of such precedents as can be applied, and by applying the principles of international law.

The decree in arbitration determined by a majority vote is to be acknowledged and signed by each member of the tribunal, and, being binding upon the contending Powers, it shall be read in open session of the tribunal. By this decree in arbitration the quarrel is adjusted definitely and without appeal.

The delegation from the United States, however, through Mr. Holls, proposed that a decree of arbitration should be subject to revision, if, within three months after the announcement of the decree, there should be discovered a new fact which, in the judgment of the tribunal, was of a nature to exercise a decisive influence upon the decree. But, under these conditions, the decree in arbitration would not really exist during the three months which follow its promulgation, and it is quite certain that the Power which lost its case would do its utmost to discover such a new fact for the purpose of securing the revision. The passions which were running high before the constitution of the Tribunal of Arbitration would grow to unexpected proportions after the decree in arbitration had been made public.

The Conference at The Hague united upon the opinion of the author of this essay, and adopted the proposition made by the delegate from the Netherlands, and accepted by the delegation from Russia, on the strength of which parties desiring to have a decree in arbitration revised have the right to do so by means of a particular compromise between themselves. But, on general principles, the decree in arbitration once announced closes the case for the parties in dispute.

It is an incontestable fact that no international conference

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has ever aroused so many hopes and so much opposition as the Conference at The Hague. At the very outset, when this Conference was first called, this opposition was almost legitimate, for the problems placed before it were, indeed, of a difficult nature: but it seems singular that now, when the Conference has finished its labors and the results of its labors are more or less accessible to all the world, the attacks continue.

It may be useful, therefore, to compare the Conference at The Hague with other international conferences or congresses which are notable in the history of the nineteenth century.

Take, for example, the Congress of Vienna in 1815. The highest hopes were centred upon that Congress; the nations expected the greatest benefits from it. It lasted nearly a year, and closed with a great demonstration; but if it be asked what this Congress has left to posterity and to us, the reply must be, next to nothing. All its leading provisions concerning political interests and the territorial rights of nations have either changed or been reversed. The only provisions of that Congress which are actually in force and which secure for it a prominent and honorable place in the history of international law, are a few provisions which concern navigation of international streams and the declaration that the slave-trade is abolished forever.

Turning to the Congress of Paris of 1856, by which the Crimean War was closed, we see that the exclusive object of the provisions of the Treaty of Paris was to rearrange the *status quo* in Turkey. If that Congress has hitherto held a conspicuous place in the history of the progress of international relations, it is due to the famous declaration on maritime law.

If we pass on to the Congress of Berlin in 1878, we note that it was presided over by the most practical politician of the nineteenth century, Prince Bismarck, and that the Treaty of Berlin altered the condition of things created by the Treaty of Paris in 1856, so far as the Balkan Peninsula was concerned. It has left nothing behind which tends to the pacific and progressive development of international relations. It had in view nothing but the political interests of the nations, and political interests change and develop under the influence of circumstances, of time and the prejudices of the nations.

If now we ask ourselves what place is occupied among the various congresses and conferences which have taken place dur-

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ing the century by the Conference at The Hague, it will incontestably appear that all the international actions taken by it will ever remain the foundation, the corner-stone, of every useful attempt made towards the establishment of normal and peaceful relations between the nations, and of creating an order of things more in conformity with the permanent and legitimate interest of the nations independent of the transitory aspirations of statesmen. No conference, no congress, no meeting in the future, whose aim and task it shall be to occupy itself with matters pertaining to the progressive development of international life in peace and in war, can ignore the labors of this Conference at The Hague or take the least step along this pathway, without reverting to the *procès-verbeaux* of the Peace Conference of 1899.

This conclusion is the result of the state of things actually existing among the nations of the civilized world. The Treaty of Arbitration, of which we have above explained the principal propositions, will ever be the basis of all new propositions adopted in the future by the Powers for the purpose of developing and securing peaceful solutions of disputes.

The treaty on the laws and customs of war will certainly be as notable as the treaty on arbitration. By reason of this treaty the peaceful and unarmed inhabitants of the territory of belligerents will have the right to demand that their lives, their religious convictions and their private property shall be respected. Through it prisoners of war will be treated not as enemies, but as disarmed and honorable adversaries, worthy of respect. Through it social institutions, beneficiary establishments, religious, scientific and otherwise, which find themselves on disputed territory, shall have the right to demand and to exact of the enemy respect for the inviolability of their property and their interests.

Finally, the Red Cross treaty for times of naval warfare, signed by the Conference at The Hague, is the happy solution of the question which the Powers of Europe have been studying for thirty years. Since 1868 the "Additional Articles" to the Treaty of Geneva have existed, whereby the beneficent influence of the Treaty of Geneva on wounded and sick soldiers was also extended to sea combats. For thirty-one years diplomatic negotiations have been carried on on this question; all the Red Cross conferences which have taken place in the last twenty years have proclaimed the necessity of recognizing the Red Cross treaty for

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the sick and wounded in naval warfare. But nothing effectual was accomplished up to the Conference at The Hague. It was this Conference that caused the final adoption by sixteen Powers of Europe of the principle whereby the wounded in times of naval warfare shall have the same right to have their person, their life, their health and their property respected, as the wounded in case of warfare on land.

In conclusion we ought to make one further observation of indisputable interest.

None of the congresses and conferences hitherto held can be compared with the Conference at The Hague with respect to ethnic structure. In all other congresses and conferences of the century only a limited number of states were represented. In almost all cases the great Powers actually decided the questions for the nations. But at the Conference at The Hague, twenty-six Powers were represented! There were more than one hundred and ten delegates there from these Powers. The delegates represented not only the Powers of Europe, not only the Great Power of America, but also Turkey, Persia, China, Japan.

The session-hall of the Conference at The Hague, in the royal palace of the Huis ten Bosch, cannot be compared with the session-hall of the Congress of Paris, of Berlin or of Vienna. In this session-hall the delegates of the twenty-six Powers were not seated about a table; there could have been no such table. They were separately grouped in a great hall, which represented, as has been said of it, a sort of "International Parliament." The consultations were not secret negotiations, "behind the scenes." But great questions were elucidated by discourses and study, by reciprocal exchange of ideas in open session, before the representatives of three parts of the world.

Finally, and it is a happy token to note, the longer the labors of the Conference at The Hague lasted, the more fully views were exchanged among the representatives of the different Powers, the more pronounced grew the mutual respect, the more friendly grew the personal relations, the more palpable became the desire to do something for the future.

This is a most encouraging fact which explains much in the past and is full of high promise for the future.

F. DE MARTENS.

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THE INTERNATIONAL CONFERENCE OF PEACE.*

BY SETH LOW, LL.D., PRESIDENT OF COLUMBIA UNIVERSITY, AND UNITED STATES DELEGATE TO THE PEACE CONFERENCE AT THE HAGUE.

THE origin of the Conference is well known. Proposed by the Czar of Russia, and summoned, at his instance, by the Queen of the Netherlands, the Conference met in the city of The Hague, on the 18th of May of the current year, and remained in session until it adjourned *sine die* on the 29th of July. It was attended by delegates from twenty-six Powers. Of these, twenty were European, two American and four Asiatic. It is interesting to compare this with the membership of the International Marine Conference, the first world Conference ever held for purposes of *quasi* legislation, which met in Washington at the call of the United States Government in 1889. At that Conference, twenty-eight Powers were represented, fourteen European, eleven American (including Hawaii), and three Asiatic.

At the Conference of Peace, the European Powers were Germany, Austria, Belgium, Denmark, Spain, France, Great Britain and Ireland, Greece, Italy, Luxembourg, Montenegro, Holland, Portugal, Roumania, Russia, Servia, Sweden and Norway, Switzerland, Turkey, and Bulgaria. The American Powers were the United States of America, and Mexico. The Asiatic Powers were China, Japan, Persia and Siam. Each Power had one vote, but was represented by as many delegates as it chose.

*The writer, having been a member of the Commission representing the United States at the International Conference at The Hague, has endeavored to state accurately not only the action of the Conference, but also the attitude of the American delegation. He has done this, however, in his own words, and from his own point of view; so that he alone, and not any of his colleagues, is responsible for the statements contained in this paper.

The purpose of the paper is to give to the ordinary reader, as distinguished from the student, a general idea of the Conference and its work. The student should turn to the official reports of the American Commission, which alone can speak with authority on behalf of the Commission.

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The first thing to be observed about the membership of the Conference is that, like its predecessor the International Marine Conference, it included nations from America and Asia, as well as from Europe; and the second is that the representation of Europe and of Asia was much more complete than that of America. It is striking that the entire Continent of Africa, once the seat of power of the Pharaohs and of Carthage, contains to-day no nation that was invited. It is not known to the writer why the nations of Central and South America were not represented. The notable sub-division of Europe into separate and independent Powers, as compared with the other continents represented, is strikingly evident from the composition of the Conference. When one recalls that a similar list of the European Powers made a century ago would have shown a still greater sub-division, one cannot help wondering whether the process of amalgamation is yet complete. On the one side is the astonishing persistence of national types, even when limited to small areas, affecting language, customs, and, until very recently, also dress; but, upon the other side, are all the tendencies of the age, as illustrated, as forcibly as anywhere, in the industrial and commercial world. The practical inconveniences arising from custom-houses at short intervals, from changing currencies during every long journey, and from change of language, are also exceedingly great in an age when travel and commercial intercourse are easy and are bringing about the unification of the world in so many ways. This is an interesting problem suggested by the Conference of Peace, though not discussed by it.

The unique character of the Conference appeared in other ways. While French was the language of the Conference, one could hear among the delegates almost every civilized tongue. Reports were transmitted to the home governments in the perpendicular writing of the Orient, and in the right to left writing of the Middle East, as well as in the characteristic script of European speech. At the reception given to the Conference by the Queen, which every one attended in gala costume, the spectacle was very brilliant, because the representatives of every nation wore the uniform and orders of their rank. It led one of the delegates to remark that there had been no such gathering of the nations since the Congress of Vienna early in the century. But, indeed, except at Washington in 1889, there has been at no time any such

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meeting; for the presence of Asia and America in conference with Europe is a thing still new in the world's history.

China, true to its conservative instincts, wore here as everywhere its characteristic dress. Japan and Siam, on the other hand, wore the dress of Europe, as if to emphasize their formal entry among the world's family of nations. The Turk with his red fez and the Persian with his black, while otherwise dressed as Europeans, seemed to illustrate how hard it is for the East wholly to assimilate itself to the West. The Americans in their evening dress were happily conspicuous for their simplicity. But, whatever the variety, there, as in everything relating to the Conference, was the predominating fact of unity. It was a gathering of the world's Powers on the basis of equality, each having one vote, and on the basis of recognized independence.

It will be observed, also, that among the nations represented there were all the great Powers of the world and many of the small ones; Powers that control great areas of the world's surface and influence great multitudes of the world's people, and Powers content to preserve and guard their own individuality in the small domains that are theirs; Powers also that are aggressive factors in the world's life, and Powers that find the forces of modern civilization in conflict with all that has been characteristic of their national history.

Under these circumstances, it might well have been imagined that some line of cleavage would show itself among the Powers in relation to the various questions to come before the Conference. Nothing of the sort occurred. Only at two points was there the slightest suggestion of differences between classes of Powers, as to questions of interest or point of view. When the plan for the Peaceful Settlement of International Disputes was under consideration, the Balkan States showed great sensitiveness as to certain features of the plan, lest these should enable their powerful neighbors to interfere with their autonomy. These features were immediately modified or explained in such a way as to meet the views of the Balkan States. Again, on the question of forbidding the use of asphyxiating shells and of bullets that expand or flatten easily on entering the human body, the record reads as if it were the Anglo-Saxon against the world, for England and the United States were the only two Powers who voted against this prohibition.

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It is worth while to go at some length into this subject, in order that the attitude of the American Delegation may be perfectly understood. Before doing so, however, it may tend to clearness to summarize the completed action of the Conference, as embodied in its final act. This document sets forth that the Conference has prepared, for submission to the Plenipotentiaries of the Powers, (1) three Conventions, (2) three Declarations; that it has adopted with unanimity a resolution to the effect that "the limitation of the military charges which at present so oppress the world is greatly to be desired, for the increase of the material and moral welfare of mankind"; and that it has passed six other resolutions, with differing degrees of unanimity, referring various questions for other and later consideration.

The questions referred for other consideration need only be briefly stated. The Conference expressed the hope that the Swiss Government would call an early meeting of a special Conference, to revise the Geneva Convention in relation to the Red Cross; that the Governments would make a special study of questions relating to muskets and marine artillery, with a view of reaching an understanding as to the adoption of new types and calibres; also, that the Governments would consider the possibility of reaching an understanding concerning the limitation of armed forces on land and sea, and of war budgets; and that some future Conference should consider all questions relating to the rights and duties of neutral States, the question of the immunity of private property in war on the high seas, and the question of the bombardment of ports, cities, and villages by a naval force.

The three Conventions embody the constructive work of the Conference. It suits best the scheme of this paper, however, to discuss first the three Declarations, for it was upon two of these that America and England were arrayed against the world.

The three Declarations were as follows:

1. A Declaration prohibiting the throwing of projectiles and explosives from balloons or by other new analogous means, such prohibition to be effective for five years.

2. A Declaration prohibiting the use of projectiles having as their sole object the diffusion of asphyxiating or deleterious gases.

3. A Declaration prohibiting the use of bullets which expand or flatten easily in the human body, as illustrated by certain given details of construction.

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The action of the Conference in relation to asphyxiating shells is embodied in the Declaration which forbids "the use of projectiles having as their sole object the diffusion of asphyxiating or deleterious gases." In other words, if a shell in bursting asphyxiates incidentally it is permissible; but if it is not intended to burst but only to asphyxiate, it is forbidden. It may be remarked that no such shells exist as those which are thus forbidden. What may be the effect of such shells, therefore, if any such are ever made, is purely hypothetical. To forbid their use under such circumstances seems like paraphrasing Lord Dundreary's famous question, "If you had a brother, would he like cheese?" Neither is it clear why shells which asphyxiate only should be forbidden, while shells which both explode and asphyxiate should be permitted.

The second question, as to bullets which expand or flatten easily in the human body, is more technical, but the objection to the action taken by the Conference can be made not less clear. The exact text of the Declaration adopted by the Conference reads as follows: "The contracting Powers forbid the use of bullets which expand or flatten easily in the human body, such as jacketed bullets of which the jacket does not entirely cover the core or has incisions in it."

The United States Delegation was at one with the representatives of the other Powers in willingness to forbid unnecessarily cruel bullets, and, in order to show this, the Delegation twice offered, once in Committee and once in the full Conference, a carefully drawn resolution forbidding all bullets of an unnecessarily cruel character. It is one of the curiosities of the parliamentary procedure in use at the Conference that, on neither occasion, could this resolution be brought to a vote. In Committee, the Chairman merely swept it aside, as being too vague; and, in the Conference, in order to avoid a hopeless tangle as to the status of the question as between the Declaration recommended by the committee and the resolution proposed on behalf of the United States, the Conference itself voted to give precedence to the Declaration coming from the committee, and, this being adopted, the Conference left the American resolution in the air. In other words, the United States wished to declare a principle; the Conference preferred to forbid a certain kind of bullet. The technical objections to the Declaration lie precisely in its details. It was forcibly

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maintained by the United States ordnance expert, Capt. William Crozier, of the American Delegation, that it is quite conceivable that a ball should be invented for a smaller-calibre musket than any now in use, which, by expanding evenly, would be as effective as bullets of larger size without being in any way more cruel. It was also pointed out that inventors, in trying to avoid the details of construction prohibited by the Declaration, might easily be driven to the invention of bullets much more cruel as to the character of wounds that they would make, but which would yet be permissible because the Declaration hinges on details and not upon a principle. Incidentally, it came out in the discussion that the Declaration was aimed at a certain kind of bullet actually in use in the army of one of the Powers represented at the Conference. With this aspect of the question the Delegation from the United States naturally had no concern; but it showed its willingness, by the resolution which it offered, to join in the condemnation of this or any other bullet that might be shown to be unnecessarily cruel.

In view of the attitude of the United States Delegation towards these two proposals arbitrarily to limit the progress of invention in relation to weapons of war, it may be asked why, on the other hand, the Delegation joined in the Declaration of the Conference prohibiting "for five years, the throwing of projectiles and explosives from balloons or by other new analogous means." This Declaration, it will be observed, differs from the others materially in being limited to the term of five years. But, apart from that, there is a reason why, for the time being, this prohibition rests upon a recognizable principle. Up to the present moment, balloons are uncontrollable; they are the sport of the winds. Projectiles thrown from them, therefore, are as likely to injure noncombatants as combatants. They may also do merely useless damage; that is to say, damage that does not advance at all the military object of the fighting. Under these circumstances, the United States Delegation was glad to join in the Declaration of the Conference upon this subject, limited as it is to five years.

From these statements, it will be clear that the Delegation from the United States was not less willing than others to forbid useless cruelty in war. Perhaps it is also evident that the Delegation was not ready to encourage any mere limitations on invention in relation to warfare. This attitude is strictly in accord, not only with

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the spirit of the instructions received by the Delegation, but also with the historic attitude of the United States. Wars are much less frequent in these days than they used to be; they are also much shorter in duration. Although more destructive while they last, it cannot be questioned that, by reason of their infrequency and their shorter duration, the sum of human misery which war inflicts is much less great in recent than in earlier times. As the engines of war increase in destructiveness, they usually become more costly; that is to say, both more expensive to make and more expensive to use. The fearful costliness of modern war is one very great restraint upon a resort to it. This is, probably, one of the reasons why, in America, it has never been thought wise to try to prevent the free application of invention to the improvement of the weapons and engines of war.

The famous circular of the Russian Government proposing the Conference emphasized especially the need of the nations for disarmament. Because nothing definite was done in this direction, there is an impression in many quarters that the Conference accomplished very little. If the Conference had been originally called to promote arbitration, the opinion would probably be general that it had accomplished a great deal. The detailed proposals submitted by the Russians under the head of disarmament were so incomplete that the subject, in all its details, was referred, almost without debate, to the further study of the Powers. On the other hand, the Conference adopted unanimously the following resolution: "The Conference believes that the limitation of the military charges which at present so oppress the world is greatly to be desired for the increase of the material and moral welfare of mankind." Undoubtedly, this is only an opinion and it has no binding force; but, clearly, it strengthens the hands of all who object to an increase of military burdens where they press heavily, and it places upon the Governments the necessity of justifying, not only to their own people but also to the public opinion of mankind, every increase in armaments.

It may properly be said that, apart from every other aspect of the question, the Conference was not well composed for action in this regard. The Powers of America and Asia were called upon to consider, so far as this question is concerned, what is, in many of its aspects, a purely European question. Nowhere else in the world is the whole male population trained to arms; and nowhere

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else does militarism withdraw from the ranks of productive industry vast numbers of men, while at the same time making their support a charge upon industry. The American Delegation, in order to make clear its own conception of the situation, at the proper time placed on the records of the Conference the following declaration:

"The Delegation of the United States of America have concurred in the conclusions upon the first clause of the Russian letter of December 30th, 1898, presented to the Conference by the First Commission, namely: that the proposals of the Russian representatives, for fixing the amounts of effective forces and of budgets, military and naval, for periods of five and three years, cannot now be accepted, and that a more profound study upon the part of each State concerned is to be desired. But, while thus supporting what seemed to be the only practicable solution of a question submitted to the Conference by the Russian letter, the Delegation wishes to place upon the record that the United States, in so doing, does not express any opinion as to the course to be taken by the States of Europe. This declaration is not meant to indicate mere indifference to a difficult problem, because it does not affect the United States immediately, but expresses a determination to refrain from enunciating opinions upon matters into which, as concerning Europe alone, the United States has no claim to enter. The words drawn up by M. Bourgeois, and adopted by the First Commission,* received also the hearty concurrence of this Delegation, because in so doing it expresses the cordial interest and sympathy with which the United States, while carefully abstaining from anything that might resemble interference, regards all movements that are thought to tend to the welfare of Europe. The military and naval armaments of the United States are at present so small, relatively to the extent of territory and to the number of the population, as well as in comparison with those of other nations, that their size can entail no additional burden of expense upon the latter, nor can even form a subject for profitable mutual discussion."

The Conventions prepared by the Conference are entitled:

(1.) A Convention for the Pacific Settlement of International Disputes;

(2.) A Convention concerning the Laws and Customs of War on Land;

(3.) A Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Conference of August 22, 1864.

It will be convenient to deal with the first Convention last. The Convention concerning the Laws and Customs of War on Land is a development of the laws and customs of war proposed by the Brussels Conference of 1874, as those proposed regulations in turn, though perhaps less consciously, were a development of the

*The resolution already quoted in regard to disarmament.

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laws of war formulated at the request of President Lincoln, during the American Civil War, by Prof. Francis Lieber of Columbia University in the City of New York. The general tendency of the rules embodied in this Convention is to lessen the suffering of individuals at the hands of armies, in time of war, and to place some limitations upon the action of invading armies. The United States Delegation left this Convention unsigned, in order that it may be carefully examined by the proper authorities, inasmuch as it will call for legislation by Congress if it be accepted; but the Delegation heartily recommends its acceptance.

The Convention for the Adaptation to Maritime Warfare of the Principles of the Geneva Convention of August 22, 1864, consists, in substance, of ten articles. So far as these articles relate to hospital ships carrying the flag of a belligerent, they mark an unquestionable advance in the direction of more humane conduct of naval war. Unfortunately, in providing for the use of hospital ships under neutral flags, and in referring to the picking up of men in the water by other vessels under neutral flags, the articles do not, in the opinion of the American Delegation, sufficiently determine the status of the men who may thus be rescued. Capt. Mahan proposed three additional articles to cover these points beyond a peradventure; but, when it became apparent that these additional articles could not be adopted, but would only lead to discussions that might imperil the ten articles already agreed to, Capt. Mahan, with the approval of the American Delegation, withdrew his proposed articles. The Delegation did not wish to embarrass the Conference with reference to the articles of the Convention as it now stands. At the same time, the American representatives did not sign this Convention, but referred it to their Government, without recommendation. The precise question to be determined is, whether the gain resident in the articles as they stand offsets the disadvantage of introducing new and doubtful questions with reference to neutral vessels near the scene of a naval battle.

The Convention for the Peaceful Settlement of International Disputes is, undoubtedly, the most important work of the Conference. As the name implies, it is much more than a scheme for arbitration, though arbitration is a vital part of it.

The Convention consists of four Titles:

Title 1. Concerning the Maintenance of the General Peace.

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Title 2. Concerning Good Offices and Mediation.

Title 3. Concerning International Commissions of Inquiry.

Title 4. Concerning International Arbitration.

Title 4 is sub-divided into Chapters, as follows:

Chapter 1 relates to the general subject of Arbitration, defines its object, and the like.

Chapter 2 relates to the Permanent Court of Arbitration, and provides for its establishment.

Chapter 3 relates to procedure in cases of arbitration, especially before the Permanent Court.

Title 1 of the Convention consists of only one article, but it explains the purpose of the whole Convention. This article reads as follows: "With the view of preventing, as often as possible, the resort to force between nations, the signatory Powers agree to employ all their efforts to assure the peaceful settlement of international differences."

By Title 2, the signatory Powers engage, in case of grave differences of opinion or of dispute, to have recourse, whenever circumstances permit, to Good Offices or Mediation. The Powers drifting towards war may themselves ask for such good offices from a friendly Power; or, neutral Powers may, at their discretion, tender such good offices. Such tender may be made even after a conflict has broken out, and in no case is it to be considered otherwise than as a friendly act. Each Power involved in the controversy retains, on the other hand, full liberty of action, both as regards the acceptance of good offices and as regards the result in the event of acceptance. A special form of mediation proposed by Mr. Holls, Secretary of the American Commission, was accepted unanimously by the Conference. It contemplates the appointment of a friendly nation to act as mediator by each one of the Powers involved in the dispute. These seconds, so to speak, are to endeavor together to find some basis of settlement which will avoid war, and failing in that, they remain charged with the duty of restoring peace at as early a day as possible.

By Title 3, the signatory Powers say, only, that "they judge it useful," in controversies of an international order, engaging neither honor nor essential interests, and involving a difference of opinion on questions of fact as to which the parties concerned have not been able to come into accord by the ordinary diplomatic methods, that these Powers should establish, whenever circum-

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stances will permit, an International Commission of Inquiry, charged to facilitate a solution of the difficulty by throwing light upon the questions of fact, by means of an impartial and conscientious examination. The Powers concerned retain the right to give what force they please to the reports of such Commissions.

The propriety of such a provision, where the nations concerned are left free, can hardly be questioned. In the Venezuela Boundary dispute, the United States Government instituted an inquiry of its own as to a controversy between two other nations. It thus recognized the necessity, at times, for outside inquiry as to questions directly affecting other nations. In the case of the destruction of the "Maine," an international inquiry was proposed by Spain and declined by the United States. The latter instance shows that the proposed Convention adopted by the Conference of Peace simply regulates and defines the scope and significance of action already recognized in diplomacy. Every nation is left free to accept or decline such an inquiry, and also to accept or decline to accept the findings resulting from the inquiry.

By placing Title 4 concerning Arbitration in connection with the foregoing proposals, the Convention at once gives to arbitration a place among the recognized means of preserving the peace of the world. It is hoped, and it is expected, that it will more and more serve this high function. For this reason, among others, the resort to Arbitration, like the resort to Good Offices and Mediation and to International Commissions of Inquiry, is left wholly voluntary. This, in the judgment of the writer, is the strength and not the weakness of the plan. Obligatory arbitration, stretched to its utmost limit as a general obligation, could only cover unimportant matters. Such questions will always be settled, without any such obligation, either in the usual diplomatic way or by arbitration. But arbitration that is voluntary may, by mutual consent, be applied to the whole field of international controversy. It has already settled many grave and threatening international disputes, and in the future, it will doubtless settle many more. The question may be asked, if this is so, in what way has the Conference furthered the cause of arbitration? The writer would reply, (1) by giving to arbitration this recognized place among the means of preserving the world's peace; (2) by making notable provision for it through the establishment of a Permanent Court; and (3) by making a resort to arbitration easy.

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At one point in the Convention there is a seeming departure from the voluntary character of the methods proposed for preserving the world's peace. Article 27 of this Convention reads: "The signatory Powers consider it a duty, in the case when an acute dispute threatens to break out between two or more of them, to remind these Powers that the Permanent Court is open to them. Consequently, they declare that the fact of calling the attention of the Parties to the provisions of the present Convention, and the advice given, in the higher interest of peace, to address themselves to the Permanent Court, cannot be considered otherwise than as acts of Good Offices."

When this section was literally read, it seemed to the American Delegation to confront the United States with a proposal to enter into an obligation to intervene, in the manner proposed, in every controversy that might arise between any of the signatory Powers; and to invite a similar course on their part towards the United States. Such an obligation and such an invitation, without any modification, might well be thought, as it appeared to the Delegation, to be in direct conflict with the historic policy of the United States in both directions. The American Delegation endeavored, therefore, to secure an amendment of Article 27 which would limit the duty accepted by the signatory Powers to the cases where circumstances would permit, thus making it clear, upon the face of the Article, that each nation was to judge for itself when the duty could properly be discharged. At an earlier stage of the Conference, such an amendment could probably have been made; for there was no hesitation, on the part of any one, in saying that the obligation created by the article was a moral duty, as to the performance of which each nation, in the nature of things, must be its own judge. On the other hand, it was pointed out that, at the end of the Conference, an attempt to amend the terms of the Article as agreed upon in Committee might lead to very serious results. Accordingly, the American Delegation contented itself by placing on the minutes of the Conference, when the Convention was about to be adopted, the following Declaration: "The Delegation of the United States of America, in signing the Convention regulating the peaceable settlement of international conflicts, as proposed by the International Peace Conference, make the following declaration: 'Nothing contained in this Convention shall be so construed as to require the United States of America to depart

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from its traditional policy of not intruding upon, interfering with, or entangling itself in, the political questions or policy or internal administration of any foreign State; nor shall anything contained in the said Convention be construed to imply a relinquishment by the United States of America of its traditional attitude toward purely American questions.' "

This Declaration having been read in full Conference, the Convention was immediately adopted by the Conference without dissent. The Convention was subsequently signed by the American Delegation subject to the reserve of this Declaration. The foregoing explanation will have made it clear that the Convention to which this Declaration applies is much more than a convention providing for a Permanent Court of Arbitration. The Convention cannot fail to be useful in promoting the peaceful settlement of international disputes, wherever such a settlement is possible; but, on the other hand, it appeared to be essential that the United States, in becoming a party to the Convention, should not, by the very act, appear to abandon policies that have become part of the nation's life. No such embarrassment confronted any other Power.

It is not proposed, in this article, to discuss the details of the Permanent Court of Arbitration. Briefly, each of the signatory Powers files in a Bureau at The Hague a list of not more than four names of men deemed by it to be well equipped to serve as arbitrators. This Bureau is administered by the Representatives of the signatory Powers accredited to The Hague, with the Netherlands Minister for Foreign Affairs as Chairman. This Administrative Council conducts the central Bureau, appoints the Clerk of the Court, provides offices, and, in a word, attends to all the details. When an arbitration is desired, the Powers concerned agree upon its terms and indicate their arbitrators. While nations desiring to arbitrate are not confined in their choice to men whose names are upon the list, it is expected that the choice of arbitrators will ordinarily be made from this number. Indeed, the provision of these names is one of the ways in which arbitration has been made easy, as it is hoped by this means to avoid one of the difficulties, always felt in arranging for arbitrations hitherto; that is to say, the difficulty of finding suitable arbitrators. Up to this time it has been necessary, with great effort and delay, to construct every detail of the tribunal that is called into being to conduct such an arbitration. The Conference of Peace has constructed

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all the standing parts, so to speak, of such a tribunal. It still remains necessary for the Powers concerned to agree upon the terms of the arbitration and upon the arbitrators; but, all that it is now necessary to do is to put together the parts of the machine that are, as it were, already assembled, instead of, as heretofore, being obliged to construct the parts as well as to put them together. The permanency of the Court and of the records is also a factor of the greatest importance; for permanency of court and of record takes for granted the gradual growth of a system of international jurisprudence, and such a system necessarily involves and must rest upon the idea of international justice. When these considerations are fully appreciated, it will be evident that the International Conference of Peace has justified its being.

The broad significance of the Convention for the Peaceful Settlement of International Disputes may be stated in a single word. The Powers that give their adhesion to this Convention, when drifting toward war, may be called upon, by their own consent, to take the responsibility of declining to accept good offices, of declining to accept mediation, of declining to accept an international inquiry, and of declining to accept arbitration. This Convention proceeds upon the theory that a nation ought to be willing to accept these responsibilities, before resorting to arms, precisely as President McKinley, when the Spanish-American War was coming on, declined to accept an international inquiry in regard to the destruction of the "Maine," and told the representatives of the Powers, when they waited upon him, that a situation had grown up which was no longer tolerable to the American people. No one supposes that this Convention, even if universally signed, will prevent all war; but it will compel the nations, in a new way, to justify war to the public opinion of mankind.

All that a body of the nature of the Conference could do, has been done. It remains for other forces, and notably for public opinion in all the nations, to make effective what the Conference has proposed. In the opinion of the writer, there is no greater evidence of the wisdom of the Conference than that it has, thus fearlessly and confidently, left to public opinion the vitalization of its work. It is a happy augury that, before the Conference adjourned, the Convention for the Pacific Settlement of International Disputes was signed by the Plenipotentiaries of sixteen out of twenty-six of the Powers represented at the Conference, namely

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by Belgium, Denmark, Spain, The United States of America, Mexico, France, Greece, Montenegro, Holland, Persia, Portugal, Roumania, Russia, Siam, Sweden and Norway, and Bulgaria. There seemed to be no reason to doubt, at the time of adjournment, that the other Powers would sign before the 31st of December. The question of ratification remains to be determined in every case, and it is impossible to predict by what date action on that point may be looked for in any of the nations. The public opinion of the United States may well address itself to securing the ratification of this Convention by the Senate when the Convention is submitted by the President.

SETH LOW.

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FRANCE AT THE PARTING OF THE WAYS.

BY BERNARD LAZARE.

ON the 7th of August, the proceedings in the Dreyfus trial were opened before the court-martial at Rennes. If this case had not disclosed the fact that, unhappily for France, every idea of law had disappeared and that the very first principles of jurisprudence were no longer understood, there would have been a few sessions devoted to the statement of the case and of the principal facts involved, and to a simple ratification of the decree of the Court of Cassation, which explicitly proclaimed the innocence of the man condemned in 1894 and legally attributed the *bordereau*, upon which the entire accusation was based, to Major Esterhazy. All this was voluntarily overlooked by both sides, by the prosecution as well as the defense. They desired a great trial; they seemed to imply that the case had not been fully pleaded before the Court of Cassation and that it was expedient to do it anew. The prosecution produced experts, notwithstanding that the handwriting of the incriminating document had been decided not to be that of Dreyfus. The defense summoned Captain Lebrun-Renaud although the court had rejected the legend of the confession. The Government could not, and did not dare to, uphold the decisions of the supreme tribunal. No one recognized that a dangerous precedent was being established, which was a menace to all, and that thenceforth a decision of the Court of Cassation, pronounced after investigation, and setting forth the reasons on which it was based, could no longer protect a citizen, not merely from suspicion, but even from the illegal proceedings of the lower courts, which, by the precedent of the Dreyfus case, have become free to contest the acts and the judgments of the higher tribunals. Such is the actual situation; and it has arisen, it must be said, not only through the mistakes of the parties involved, not only through

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the indecision of the executive, but also through the cowardice of the Court of Cassation, which did not dare to render a final judgment, when its duty was to reverse the former verdict without appeal.

If, however, in consequence of this conflict between the civil authority and the old and barbarous military jurisdiction, the ignorance of all rules of jurisprudence might be expected in a tribunal of soldiers, it is none the less true that this trial could have taken place only because of the ignorance of these soldiers, who are unacquainted with the very commonplaces of law, and who substitute for the articles of the code the antiquated notions of their peculiar honor. The mere examination of the facts should have sufficed, before any pleadings were made, to convince the judges. Their conviction should have been confirmed by Major Esterhazy's reiterated confession, a spontaneous confession, written in the presence of witnesses, corroborated by the visible, undeniable identity of this handwriting and that of the *bordereau,* which any one could recognize without the aid of experts. It was decided, however, to go on with the case—and to ignore all preceding verification, all evidence. It was decreed, every Frenchman approving, that Dreyfus could not be cleared of the accusations hanging over him except by the judgment of his peers. Even the lawyers who defended the unfortunate man petitioned the Court of Cassation to remand him to the jurisdiction of his peers, and the court acquiesced without perceiving that by thus acknowledging the jurisdiction of his peers it denied its own. No one pointed out that this conception was only a remnant of barbarism, and that the most unsafe tribunal for a man was one composed of individuals belonging to his own class, that is to say, possessing its peculiar prejudices in addition to general prejudices, and having to uphold not only justice but also such interests of the corps as are in conflict with those of the man subject to their verdict; and not only these professional interests but also the personal interests of competitors or rivals.

In reality, it was the function of the Court of Cassation to say these things, and the only effective way of saying them was to reverse the former verdict definitely, to set Dreyfus free and to absolve him by a decree which every one would have honored. It did not do so. The majority of its members held that in such a case right and true justice should give way before legal subleties.

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Dreyfus remanded to a court-martial was Dreyfus again delivered up to the military oligarchy which had opposed revision for three years with all its power, because that would mean its own condemnation. Although it had received a blow in the person of some of its members, notwithstanding Henry's death, notwithstanding du Paty de Clam's defection, notwithstanding the fact that Majors Lauth and Cuignet, the archivist Gribelin, and Generals Gonse and Boisdeffre had been removed and disciplined, the old General Staff still retained all its power. Its influence exerted its full sway over the tribunal before which Dreyfus had been sent, and the fact that a few men firmly resolved to defend the Republic were in power did not suffice to destroy a state of things which dated back many long years. A close corporation, specially recruited from officers drawn from religious schools, educated by the Jesuits and priests and raised in ideas of hostility to the existing form of government, the General Staff had very long since placed its creatures everywhere and extended its ramifications into all the military sub-divisions, promoting everywhere a lively and selfish solidarity, to which it had only to appeal as soon as the decree of revision had gone forth.

It was a necessity for the General Staff that the Dreyfus trial should take place, and it was an equal necessity for the factions that had drawn up in line behind these criminal soldiers in the hope of seeing the Republic go down. Anti-revisionists of note said and wrote—and that, moreover, after promising to submit to the decree of the united chambers—that the innocence or the guilt of Dreyfus was of little moment; that the real question at issue was that special honor of the army which they had taken for their principle, honor which consisted in departing as far as possible from every tradition of humanity, from every idea of right and justice, to bow down before a fetish whose intangibility was proclaimed as a dogma which did not admit of heretics. This case was to be not the trial of a man, but the rehabilitation of a caste, a trial to defend the General Staff, to establish in an indisputable manner the infallibility of the ministers of war and of the decisions of military justice. It was not so much a tribunal that assembled as a council, whose purpose it was to indicate to the civil courts that their power ceased where its own commenced.

Given these intentions, what must be done? All those who were in any way concerned in the campaign for revision must be

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arraigned. Their unworthiness must be demonstrated, for so their efforts would be laid open to suspicion, the vigorousness of these efforts attributed to unmentionable sentiments, to base motives, and the prestige of the enemies of revision would grow in proportion to the disgrace of the revisionists. Who were those that were selected for targets? They were, first, the writers and publicists who had fought most vigorously; these were not named, they were not arraigned individually, but the suspicion was cast upon them that they were the tools of a mysterious syndicate, formed for the special purpose of ruining and dishonoring France. Persons were summoned as witnesses by whom it was proposed to establish with much plausibility the existence of such an organization. The military witnesses, moreover, took care to make insinuations which could not be verified and which were so vague that no one could reply to them. Thus was summoned M. Penot, who was to affirm the reality of the attempts at corruption made in 1894 by M. Matthieu Dreyfus on Colonel Sandherr, at that time chief of the Information Bureau; thus was summoned M. de Grandmaison, a monarchist deputy, who was to appear as the responsible editor of remarks attributed by the Marquis of Maussabré, the deputy of the Deux-Sèvres, to Baron Edouard de Rothschild. We shall presently see how General Mercier and General Roget were to support these witnesses.

All this was to establish the existence of a general plan and of a vast coalition, but they also needed to show particular combinations, to reveal the divers centres of inspiration; and for this purpose a few men had to be singled out and attacked. The first of all was Colonel Picquart, who reminded the military inquisitors of one of the checks they had suffered. Colonel Picquart must be arraigned and his testimony, which was so convincingly in favor of Dreyfus, must be discredited. At the time when the party of the General Staff was still all-powerful, at the time when M. Cavaignac, the Minister of War, was preparing to post the Henry forgery on the walls of the thirty-six thousand communes of France, a preliminary examination had been set on foot against Colonel Picquart. He was accused of having entered into a criminal conspiracy with the lawyer Leblois, Senator Scheurer-Kestner and myself to substitute Esterhazy for Dreyfus. They accused him of secret machinations; they accused him of having prepared the campaign for revision; they accused him even of

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having furnished me with the necessary information for writing my first pamphlet in 1896; they accused him, finally, of having forged the famous "*petit bleu*," which incriminated Esterhazy, or at least of having used it against him knowing it to be false. Although Colonel Picquart was cleared of all suspicion by the decisions of examining Magistrate Fabre, of the Chamber of Indictment, and of Captain Tavernier, that there was no evidence, it was still found important to accuse him again; and, for this purpose, Captain Junck, Archivist Gribelin, Major Lauth, General Gonse and Savignaud, who was formerly an officer's servant, were summoned as witnesses.

It was not enough to accuse Colonel Picquart, the memory of Colonel Henry must also be cleared. After having travestied his crime of forgery into a patriotic aberration, they had to remove at all costs the terrible suspicion, the all but certainty, that he had been at a certain time in a position to be the accomplice of Major Esterhazy and the habitual purveyor of information to that miscreant. That was a terrible supposition for the generals who accused Dreyfus, for, if it had been verified, it would have ruined the whole laborious system which they had been at so much pains to contrive. To defend Henry, it was necessary to blacken the man whose testimony was strongest against him, namely, the examining magistrate Bertulus, a witness of the collapse of the wretched man, of his terror and anguish, when in the course of his examination respecting Major Esterhazy he had come upon the track of his questionable relations with Colonel Henry. To dishonor M. Bertulus, it was thought that General Roget, Major Cuignet and Captain Junck would be all that was required. They also summoned Henry's widow, and skilfully prepared her for a melodramatic scene which they hoped would produce a great effect. Thus, then, were organized the prosecution of the partisans of revision, the prosecution of Colonel Picquart, the rehabilitation of Colonel Henry; but they had also to consider the prosecution of Dreyfus himself. How did the General Staff plan that? They knew that none of the judges of the court-martial at Rennes had any knowledge of the investigation made by the criminal chamber of the Court of Cassation; nay more, that their minds were poisoned against it in advance and that they looked upon it with suspicion. It was thought, therefore, that the method which had availed before the civil magistrates might, perhaps, be a good

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one before soldiers. It was hoped that for them the statements of their chiefs or their comrades in arms, even when unsupported by proofs, would have a weight which it had not had elsewhere. So they ignored both the investigation with its attendant results and the decision which was its logical and inevitable outcome. They hoped to establish triumphantly that Dreyfus was guilty of the crime of high treason, first, because the incriminating *bordereau* was written by him; secondly, because the documents enumerated in it could have been delivered only by an officer of the General Staff, and, thirdly, because the captain had at one time confessed his crime.

To establish the first point was a difficult task. It had not only been proved, by the most diverse and the most authoritative evidence, that the handwriting of the *bordereau* did not resemble Dreyfus's handwriting and was not his, but its startling resemblance to Esterhazy's had also been pointed out. When driven to the wall, Esterhazy had acknowledged that he had written the *bordereau,* but they hoped to discredit this confession by establishing his falsehood when he pretended that he wrote it because he was ordered to do so, and in his capacity as an agent of the counter-spy system specially charged to furnish evidence against Dreyfus. All their hopes rested upon M. Alphonse Bertillon, the director of the Paris judicial identification service, who had taken upon himself to prove that Dreyfus had written the *bordereau,* not in his natural handwriting, but according to a safety system having a key-word for its basis, namely, the word *intérêt,* taken from a letter of M. Matthieu Dreyfus, his brother, and developed according to a mathematical rhythm. A second witness, the artillery captain Valerio, was summoned in support of the Bertillon theory to confirm it and explain any obscurities that might arise.

The duty of establishing that the documents enumerated in the *bordereau* could come only from an officer of the General Staff fell to the lot of the five ministers of war, and especially to General Mercier, who was to be supported by General Roget. The method employed for this demonstration was simple; it was based upon the fact that nobody knew the contents of the documents which had been delivered. Before any tribunal this fact ought to have prevented the prosecution from indulging in any hypothesis, and confined it to the only positive affirmation possible under the cir-

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cumstances, namely, that unknown documents had been delivered, which was an act in itself sufficiently felonious, criminal and punishable. The court-martial permitted a different course. The nature of the information delivered being unknown, it was supposed to be extremely important, an ultra-secret and confidential character was attributed to it and the capital importance of the documents was demonstrated theoretically, after which it was deemed that their reality was established. Their delivery, as well as their character, being thus assumed, they deduced the indisputable result of their demonstration, that only an officer belonging to the General Staff could have delivered them.

It is certain, however, that the very witnesses who were to undertake and defend such a demonstration before the court-martial must have been secretly conscious of its fragility. Perhaps they also feared that M. Bertillon's system was not proof against attack and refutation. At any rate, they expected that both systems would be attacked. It is a dangerous operation in a criminal trial to replace facts and evidence by hypothetical fabrications, by reasoning without real foundation, by deductions devoid of logic from premises that are not rigorously established. The fact that no dissertation is as good as a proof is so true that even those who have for years been marching blindly behind the white plumes of the generals of the Staff, required from them a decisive proof of Dreyfus's guilt, a proof that would end all discussion, that would convince and satisfy the judges. The entire anti-revisionist press affirmed the existence of such proof on the very eve of the trial. It was kept back by General Mercier, they said; patriotic scruples alone had hitherto prevented him from making use of it, but he now perceived that his duty was to lay aside these scruples and to strike the decisive blow which none could resist. Now, General Mercier had no such proof any more than the other generals, he possessed none whatever; and the only positive fact which he hoped to lay before the judges was Dreyfus's confession. To substantiate this confession, they had not summoned the man who boasted that it had been made to him; they feared the vagueness of his testimony, they preferred to bring in corroborative testimony and to fall back on the deposition of a dead man (Major d'Attel), in order to support that of Captain Lebrun-Renaud whom they preferred to keep away, but who was summoned by the defense.

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The confession was to be the supreme fortress, the impregnable rampart, and nothing shows better the theological character, so to speak, of this trial than the capital rôle which they assigned to the pretended confession of Captain Dreyfus. To rest satisfied with a confession, in order to save the trouble of discussion, is one form of accepting the principle of authority as the sole guide of one's thinking. To declare one's self content with a confession is to save the trouble of all examination, to substitute for one's reason a mere statement without studying its value, its scope or its quality, and without ascertaining whether it does not clash with the facts. A thousand and one motives may induce a man to confess a crime which he has not committed. To admit a confession *a priori* and base a conviction upon it is the height of absurdity. The Catholic mind is adapted to the acceptance of such a belief. It is a clerical principle that a confession is better than a proof. All inquisitorial jurisprudence, all the ancient jurisprudence of Catholic countries, as in barbarous times, is founded upon obtaining a confession and not on finding proofs. The Church has always opposed the latter; it will not admit scientific demonstration, but prefers an authoritative and hierarchical affirmation, which does not permit the development of rational examination and free criticism. It transports into the domain of law its doctrines concerning the research of the truth in scientific matters, and, when the accused is brought before it, it demands not proofs of guilt in order to confound and condemn him, but a dogma of culpability. It is in this way that the treason of Dreyfus became a dogma for the great majority of Frenchmen, not only for those of little or no culture, but even more for those who until then belonged to the intellectual *élite*. "Dreyfus is guilty," said M. Jules Lemaître, M. Maurice Barrès and M. François Coppée, because a court-martial said so, because seven ministers of war proclaimed it; these assertions ought to render all examination unnecessary; they must be accepted as an act of faith, and whoever refuses to do so is a bad Frenchman, as he would be a bad Catholic who should reject the decisions of a council or the word of a Pope. This explains the necessity under which the accusers of Dreyfus were placed, of attaching so much importance to the pseudo-confession to Captain Lebrun-Renaud, and of making it the *ultima ratio* of their resistance when they were driven into the last ditch.

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Such was the way in which the trial was planned in advance, such were the tactics adopted; and it was these tactics that the General Staff had the power to impose upon the court-martial, and on the man whose function it was to summon the witnesses, namely Major Carrière, the Government commissioner, who deliberately ignored the decree of the Court of Cassation, which above all it was his duty to carry out.

But the trial was planned not only in its grand outlines, but even in its smallest details. Each of the depositions of the incriminating witnesses was minutely ordered and arranged by a legal director accustomed to the trickeries of the practice and the resources of chicanery, by one of the regular counsellors of the General Staff, either by Maître Ployer, ex-president of the barristers, or by Maître Auffray, a militant royalist and former secretary of M. de Mackau. The rôles had been distributed to each of the witnesses; according to predetermined order they were each to unfold the reasons for their convictions. What this order was has been explained: the handwriting of the *bordereau*, its ascription to an officer of the General Staff and Dreyfus's confession. In addition they were each to contribute certain special information, which they all doubtless had, but which they had divided up among themselves. Their testimony was given according to a sort of prescribed method. Its preparation was perfectly apparent; bearing upon the general thesis, each witness spoke with the intention of supporting the one who preceded him, and of preparing the way for the one who followed. Never was there a trial more radically vitiated by criminal conspiracy among the witnesses! It was not simply an understanding but a coalition against right and justice for the purpose of defeating them, if necessary even by falsehood and perjury. Never before, in any trial or before any tribunal, have witnesses been allowed to appear without adducing a single fact, without their having been in any way connected with the case, but merely to make speeches for the prosecution. This will be a unique fact in the history of jurisprudence, that men could thus assume the rôle of prosecutors without authority, and that a court accepted them as witnesses.

But the very arrangement of this trial by schemers constituted its weakness. The depositions, so laboriously prepared, were suitable for being written and read in a parlor or before a public already prepared who had the same passions as the reader. They

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could not bear discussion, nor criticism, nor contradiction. They would have been admissible only in the mouth of a public prosecutor who was not to be followed by a reply. The truth of my assertions will appear on an examination of the way in which the trial unfolded itself. First, however, I must mention a fact which dominates it: the existence of a secret collection of documents (called the secret *dossier*) now admitted to discussion and examined behind closed doors, this time in presence of the accused and his counsel. It had already been examined by the Court of Cassation, and it had not appeared to that court to contain any sort of evidence against Captain Dreyfus. By some inexcusable weakness, the Minister of War decided that he ought to lay it before the court-martial, and the Minister of Foreign Affairs followed his example. The former delegated General Chamoin, and the latter M. Paléologue, to explain the documents. It is known that, according to Major Cuignet's celebrated classification, they consisted of three portions. The first contained the papers which the General Staff believed to have reference to Dreyfus; the second, those which did not concern him; and the third, the forgeries. The tribunal examined this *dossier* for four days before the opening of the proceedings, and after the preliminary examination of Dreyfus. Afterwards a portion of the documents it contained were read and discussed in public session. Already, at this point, it was perceived that one forgery had remained in Major Cuignet's first division. It had no doubt escaped his vigilance. I mean the false report attributed, with the date of November, 1897, to Colonel Schneider, the military attaché of Austria-Hungary. But there was still another forgery in the same collection, namely, an alleged report by Colonel Panizzardi to his ambassador, M. Ressmann. As soon as these two reports were published, they were disowned as forgeries by those who were said to be their authors. On the remaining documents, the five ministers of war and General Roget pretended to base their conviction that the author of the *bordereau* was an officer of the General Staff, and that the said officer could be none other than Dreyfus. As a matter of fact, they succeeded only in showing that these documents could not be laid to Dreyfus's charge, unless it were previously demonstrated that Dreyfus had written the *bordereau* and that the papers delivered were really important. Now, there is henceforth no question that the handwriting of the *bordereau* is Esterhazy's; and, according to

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M. Picot's testimony, which was not contradicted by Colonel Schneider, the documents were delivered by Major Esterhazy, the writer of the *bordereau*; and these documents are of no importance. The prosecution undoubtedly discovered that the secret *dossier* scarecrow had failed to produce any effect on the judges, for, at the last moment, they submitted ultra-secret *dossiers* which were examined with closed doors on the twenty-fifth and the twenty-sixth sessions of the trial; but these ultra-secret *dossiers* completed the confusion of those who pretended that they incriminated Captain Dreyfus.

Now, what has been the outcome of the trial? What have been the facts brought out and demonstrated? I said that one of the first cares of its organizers was the rehabilitation of the General Staff. Well, it was plainly established that General Gonse, Colonel du Paty de Clam, Major Lauth, Captain Junck and Archivist Gribelin had aided Esterhazy, by underhanded manœuvres, to deceive the military judges before whom he appeared at the end of December, 1898. It was proved, by the depositions of M. Hadamard and M. Painlevé, that General Gonse had falsified and distorted certain remarks of the latter, and that these remarks, which were in favor of Dreyfus, had been transformed into testimony against him, and introduced into the secret *dossier,* where it was thought M. Painlevé would never discover them. Who will forget the memorable scene when General Gonse, with a wild look, trembling legs and stammering lips, was obliged to lie and lie again to back up his first falsehood; when he failed to make it good and took his seat amidst the hooting of the audience? Finally, it was proved, and this is the gravest fact of all, that not only had an innocent man been condemned in 1894, on the strength of secret papers which neither he nor his counsel, M. Demange, had known, but also that a forgery figured among these papers. Hence, while the belief might have been entertained before this trial that Captain Dreyfus was the victim of a frightful and lamentable error in his first trial, it is now proved that he was the victim of the most odious of crimes.

On November 2d, 1894, when Colonel Panizzardi, the military attaché of the Italian embassy, had learned from the newspapers that Captain Dreyfus had been arrested, he telegraphed to his Government that he personally had never had any relations with Dreyfus, and, if the same thing could be said at Rome, that it

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would be well to make a declaration to that effect to avoid comment. This despatch was in cipher. The cipher bureau of the Ministry of Foreign Affairs first sent, as a semi-official and friendly act, an approximate translation to Colonel Sandherr, the chief of the Bureau of Information, giving the last words with all reserve, and then, a few days afterwards, the official text was given. I have just analyzed it; it superseded, of course, the first attempt at translation in which the last two words *"emissaire prévenu"* might have given rise to incriminating interpretations against the accused officer. It was clear that this despatch exonerated Captain Dreyfus. On the very first day of the trial at Rennes, General Mercier cynically confessed that he had cunningly caused a man to be stabbed in the back whom, as the head of the army, he was in duty bound to defend, and so laid himself open to the criminal charge of not having turned over into the *dossier* this telegram which established the fact that Captain Dreyfus had never had any relations with Italy nor her agents in France or elsewhere. Thus the position publicly taken by General Mercier was that of a supreme judge destroying the proofs of innocence. Moreover, it became plain to everybody that his atrocious crime had been more abominable still, since he had dared to change this proof of innocence into a proof of guilt, since he had communicated to the court-martial of 1894, when it had withdrawn for deliberation, a false text of the despatch of November 2d, 1894.

The facts of this crime were brought out by the testimony of a man who had been the witness of it—who had been its victim! Involuntarily, he had sanctioned it, the abused and mutilated document, and had used it against the Jew, whom formidable passions had conspired to hand over to a tribunal which was assailed and importuned by the hatred of his enemies. This man had been one of the judges of that first court. It is consoling that, of those seven soldiers, one was found who had the heroism to confess his fault and the manliness to come forward to repair it; but it is sad to think that he was the only one, that Captain Freystaetter was the only one who came to Rennes to declare his remorse and his new convictions, and to bow his head before the man whom he had contributed to bury alive. As he stood up before the consciences of the new judges, they must have felt a cold shiver, their inmost being must have been swept by the terrifying breath spoken of by the prophet, insensible though they may have

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appeared, when their comrade in arms came before them with head erect gravely to make his confession, and when they looked upon the bilious face of General Mercier and the frowning countenance of Colonel Maurel, the president of the court-martial of 1894, who had just told a lie. Then they must have felt how fearful was their responsibility and what a burden they had assumed, when they undertook to judge according to justice and according to truth. These proceedings revealed the crime which lay at the origin of the Dreyfus affair, the initial crime which begot all the other crimes. By their efforts for the rehabilitation of the General Staff, the generals only demonstrated that it was even more criminal than any one had dared to suppose.

What did they bring forward in support of the hypothesis of that legendary syndicate, that dangerous weapon in the hands of the banditti and *condottieri* of an unclean press, that poisoned shaft by which all those were struck down who rushed into the battle to save the innocent and uphold the honor of their country in the eyes of the world? Until then they had proceeded with vague insinuations and perfidious allusions, following that anti-Semitic method according to which it is pretended, in the name of the true interests of the country, that everything is bought and sold in France, from her humblest citizen to her Parliament and her Supreme Court. No actual, precise facts had yet been given; but the rumor was circulated, by defaming and blackmailing sheets, that the prefects of frontier departments had often observed the passage of foreign gold. No doubt, according to the naïve conception of the few newspaper pirates who spread these reports, the subsidies of these modern Cobourgs and Pitts must have been distributed in full weight, in hard cash. General Mercier brought these things before the court-martial, or rather he made himself the responsible editor of an alleged remark of M. de Freycinet to General Jamont. When M. de Freycinet was summoned, he declared that he had never thought that the campaign conducted in France by the defenders of Dreyfus had been inspired by interested motives, and that there was no fact that justified such accusations against honorable citizens. A more sharply defined protest would have been desirable from the ex-Minister of War, but the prudent old man still thinks, upon the very threshold of the grave, that it is better to smoothe the path of senile ambition than to serve justice and right boldly and without reserve. Senator

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Trarieux manifested more manhood and civic courage when he reminded the judges that law was superior to the honor of caste; when he branded the shame and condemned the crimes of that small cabal of officers, those felons and forgers who pretended to represent the mass of the army; when he showed that those who had rushed into the fight to rescue the martyr from the galleys had done so at the risk of their honor and their lives, unmindful of self-interest. Knowing that it would not suffice to spurn certain accusations before those seven men who were perhaps misled by prejudices, he called for the testimony of M. Waldeck-Rousseau, M. Barthou and M. Dupuy, who discredited forever that fable of a syndicate of treason and foreign money.

Did these proceedings at least justify the accusations brought against Lieutenant-Colonel Picquart? Quite the contrary. They disposed of the absurd tale which represented him as placed in the Ministry of War to liberate Dreyfus and put in his place another traitor selected by him. It was said that he had attempted at first to put in his place two officers named Dorval and Donin de Rosières. The Rennes trial has shown that Picquart was not concerned in the surveillance under which these two officers had been placed, and that the first of them had been marked out and persecuted by his own cousin, Colonel du Paty de Clam. It has cleared him of the infamous accusation, which, by the way, no man of honor in France believed, that he had tried to ruin Esterhazy by fabricating the *petit bleu* sent by Colonel Von Schwarzkoppen. Indeed, it has vindicated him of this charge in the most brilliant manner, M. Paléologue having testified that Count Munster, the German Ambassador, had thought it his duty to inform M. Delcassé, the Minister of Foreign Affairs, that the German military attaché had addressed several of these telegram-cards called *"petits bleus"* to Major Esterhazy, and very probably the one which had fallen into the hands of Colonel Picquart. What the trial has shown, however, is just the reverse of what its promoters had hoped for. It has shown the culpable and criminal plots carried out by Colonels Henry and du Paty de Clam, by Major Lauth, by Captain Junck and by Archivist Gribelin, the forged letters, the forged despatches and, finally, the erasure in the *petit bleu* laid to Colonel Picquart's charge in order to dishonor him. It is all clear now; it is clear enough to be an indictment of the guilty parties and the hand of justice may yet seize them.

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Did these proceedings establish that M. Bertulus had lied when he related the faltering, the confusion, the *quasi* confession of Colonel Henry? Two witnesses corroborated the testimony of this magistrate, who proved, at a time when it seemed as though there were no judges left in France, that there was at least one who was resolved to do his duty, and to resist everything that interfered with his duty. André, the clerk of the court, and Doctor Peyrot, a member of the Academy of Medicine, testified to the fact of Colonel Henry's statements. From that moment it became impossible to vindicate the memory of this man. It was certain that he was a forger, and it became probable that he was a traitor and Esterhazy's accomplice. If it was proved before the judges at Rennes that Picquart never made use of fraudulent means to substitute Esterhazy for Dreyfus, it is also proved that Colonel Henry had made every effort in his power to shield this same Esterhazy. It was he who, as early as 1894, helped to spread the belief that the traitor they wished to catch was in the offices of the General Staff; it was he who made a solemn declaration to that effect before the court-martial of 1894; it was he who again accused the unfortunate man whom he had helped to imprison, in a note which was filed in the secret *dossier,* as du Paty de Clam confessed in his deposition. It was he who, when Esterhazy's name was revealed to Colonel Picquart in 1896 by the discovery of the *petit bleu,* was the organizer of the machinations against his chief. And the confession, the reticences of his accomplice Lauth, show that he went to Bâle in 1896 and terrorized the international agent, Richard Cuers, to prevent him from denouncing Esterhazy, that is to say himself, whom he hoped to save by perpetrating the famous forgery which brought him to Mont Valérien and to the little cot where he cut his throat, a coward to his last hour, and dying without having the courage to save the innocent man whom he had ruined. And the secret *dossiers* have still further revealed to us that, to save Henry's memory and to keep Dreyfus in prison, the General Staff was paying for the silence of a certain Lajoux, a companion of Richard Cuers.

Being thus powerless to rehabilitate the General Staff, powerless to prove the existence of a syndicate, powerless to dishonor Picquart and Bertulus, powerless to vindicate Henry, have the proceedings of the court-martial fulfilled the hopes of those who thought that Dreyfus's guilt would be demonstrated?

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As regards the *bordereau*, the prosecution took refuge, as I said before, in the pretended scientific discoveries of M. Bertillon; in him was placed their last hope of proving, notwithstanding Esterhazy's confession, that the *bordereau* could have been written only by Dreyfus. The theory of a natural, running handwriting had been abandoned for the foolish hypothesis of a complicated cryptographic writing, designed to enable the accused to make use of a line of defense in 1894 which he never employed.

At the close of the proceedings, M. Bertillon's theory had to be abandoned by those who had put their trust in it, proclaimed its excellence and supported it. The testimony of M. Paraf-Javal, as well as that of the engineer Bernard, and the authoritative statement of M. Henri Poincarré, a member of the Institute and a Sarbonne professor, one of the first mathematicians in France, have established the fact that M. Bertillon's system is based upon the grossest errors and could only have been worked out by an ignorant or a crazy man. If M. Bertillon had had the least regard for scientific truth, he would have abandoned his system after such manifest evidence of its worthlessness, confessed his error and made his apology to the unfortunate man whom he had tried once more to send to prison.

Notwithstanding the testimony of M. Teyssonnières, the only one of the experts of 1894—as M. Bertillon does not consider himself an expert—who again declared that the *bordereau* was in Dreyfus's natural handwriting, with the exception of a few words artificially introduced, the *bordereau* must henceforth be regarded as Esterhazy's work, as he himself has confessed it to be. The subleties of Messrs. Varinard, Couard and Belhomme cannot affect this conclusion. So true is this that General Billot, by a manœuvre, which was abandoned, however, as soon as it was attempted, tried to insinuate before the court-martial that Esterhazy might have been in communication with Dreyfus by means of a go-between, whom he did not and could not name, since no such person exists or has existed, and since there has never been any direct or indirect relation between Captain Dreyfus and Major Esterhazy.

This hypothesis was necessary to uphold the statement of the accusing generals, that only an officer of the General Staff could have delivered the documents of the *bordereau*. But have the proceedings justified this hypothesis? Whatever may have been

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the specious skill with which General Mercier or General Roget discussed papers about which they knew nothing, which they had never seen and which they called important because they imagined them so, all their statements were proved erroneous and incorrect by the special testimony of Captain Carvalho, of General Sebert and Major Hartmann. The jesuitical skill of General Deloye, who was sent, as he himself said, as an expert by the Ministry of War, and who betrayed his commission by unlawfully turning prosecutor, could not detract from the cogency of General Sebert's and Major Hartmann's evidence. Notwithstanding General Deloye's insinuations, when he attempted to refute Major Hartmann's convincing argument, the latter was able to say with justice, in addressing his chief, that they had acknowledged the correctness of all the points he had brought forward, but denied their correctness when they were all taken together. This ironical reply discomfited General Deloye.

Beaten at all these points, the accusers had to fall back upon their last resource, the alleged confession of Dreyfus obtained by Captain Lebrun-Renaud.

Captain Lebrun-Renaud came to the bar, and tried to report the remarks which the condemned man was alleged to have made, on that day of horrible degradation, in part to the witness and in part in speaking to himself. If there was anything luminous and clear after Captain Lebrun-Renaud's testimony, it was that Captain Dreyfus had never made any confession. When questioned by the court, when questioned by the defense, when questioned by Dreyfus himself, Captain Lebrun-Renaud never once dared to say that the words heard by him and distorted by him had ever been considered by him as a confession.

Moreover, if they had been such, there is ample evidence—and the embarrassed explanations of General Mercier are not proofs to the contrary—that they had the deepest interest in the Ministry of War, in that month of January, 1895, in securing confessions, if the condemned man had made any. From the very first examination, everything had been set in motion to obtain a confession: threats by Colonel du Paty de Clam, promises to mitigate the punishment if Captain Dreyfus would confess by allowing him the company of his wife and even of his children in his exile; but they all failed before the unalterable serenity of the innocent man. If he had, at any time, uttered a sentence, a word, that could

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have enabled those who sent him to the court-martial, and who were about to have him transported, to affirm plainly and solemnly before the whole excited country that there had been no mistake, that they had justly prosecuted a traitor, that they had justly struck down a criminal, no doubt they would have done so! It was futile to invoke the testimony of a dead man, of Major d'Attel, who, they said, had also been present at the time Dreyfus made his confession. No explanation was given why a precise, circumstantial report was not obtained from Captain d'Attel, any more than from Captain Lebrun-Renaud, on that morning of the 6th of January, when they were looking for witnesses of the scene of degradation in order to obtain from them a confirmation of the fabled confession which had been invented the preceding day; nor was it explained why that report, if there had been one, had not been taken to Dreyfus for a confirmation of its terms.

The truth is, and everybody understood it and felt it, that the man who during his five years' martyrdom had never ceased to protest his innocence, never faltered for a moment, as they pretended; for he could not have done so, since he had not committed the crime of which he was accused.

This, then, is what the proceedings of the court-martial have established. Those who directed them had hoped for a very different result, a result which they could not bring about, in spite of the kind of means they employed to effect their purpose.

To bolster up their hypotheses, they tried to accumulate all sorts of evidence of vices or immorality against the unhappy man for whom none of them, not even those who were not directly concerned in the crime of 1894, ever felt the least pity in their souls. As it was impossible to recur to the reports of 1894, those slanderous reports worked up by the detective Guénée, which were so odious and so evidently false that Besson d'Ormescheville, the judge-advocate of those days, rejected them, an appeal was made to Dreyfus's former comrades in arms to testify, to those who for years had associated with him, and they offered to the world the humiliating and lamentable spectacle of human beings making themselves, without reasons, without motives and, above all, without proofs, the accusers of a man whom all their chiefs had already fallen upon! They brought forward the vaguest charges, the most indefinite statements and allegations incapable of verification. The slightest words he had spoken in their presence were turned into

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wrongs by them after they had distorted them and changed their sense. Not one of these men seemed to be conscious of the infamy of his conduct, of the villainy of his act; and not one of those who had worked by the side of Dreyfus felt sufficiently outraged to come forward and protest against such a course of action.

The result of the proceedings of the Rennes court-martial will be found to have been the dishonor, not only of the great chiefs of the General Staff, but also of the whole clique of officers who were their toadies, and who did not hesitate to strike a helpless man in order to flatter their superiors in the hope of receiving distinction or promotion.

But the accusers did not confine themselves to the collection of such testimony; they did not confine themselves to making an appeal to base military passions or base ambitions. They recruited and marshalled false witnesses by brigades, and showed their perfect skill in not having them summoned before the opening of the proceedings, thus enabling them to lie without risk, because they could then testify without making oath to tell the truth, and consequently without incurring the penalty for perjury.

They were gathered together, summoned and called up in the course of the testimony taken by the court-martial. It was General Mercier, General Roget and General Billot who informed the court of the names of Mertian de Muller, Germain, the groom, Villon, M. du Breuil, and, finally, at the last hour, as an attempt to confuse the minds of the judges who were possibly felt to lean towards the side of justice, a pretended Servian refugee named Czernuski Lazarovitch.

This is not the proper place to study the psychology of all these men, but it would be a curious study to classify the witnesses who appeared before the Rennes court-martial: those who defended their own persons, like Generals Mercier, Gonse and Boisdeffre, Major Lauth, Archivist Gribelin—that is to say, those whom an acquittal would have ruined, and who are now reserved for punishment, and even for the prison to which they tried to send their victim; those others who satisfied their resentment produced by disappointed ambition and wounded vanity, like General Roget and Major Cuignet; the witnesses malevolent by nature, like Captains Junck and Lemonnier or like Colonels Gendron and Fleur; the false military witnesses, of whom Captain Lebrun-Renaud and Major Lauth will remain the types; the false civilian witnesses

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whom I have mentioned; the skilful witnesses, like M. de Freycinet; and, finally, those who simply told the truth, and who were the heroes, like Captain Freystaetter, Captain Carvalho, Major Hartmann and, above all, Lieutenant-Colonel Picquart.

I think I have shown how the Rennes trial was begun, and how it was conducted before the court-martial. It was argued before the whole nation, before the whole civilized world, before history which to-morrow will brand the accusers and the judges, and will stamp on the forehead of France a villainous stain which nothing can remove, as nothing would wash out the bloody marks on the hands of Lady Macbeth. Everything was known, except a few documents of the secret *dossier,* and these will be known to-morrow. Then the consternation of all those who think will be still greater, when they perceive that these very documents contained the evident and undeniable proof of the innocence of Dreyfus. I will only mention here the correspondence which took place in January, 1898, between M. de Bonin, Under Secretary of State in the Italian Foreign Office, and Count Tornielli, Italian Ambassador in Paris. These letters confirmed in a decisive manner the eloquent, noble and superb evidence of Senator Trarieux. This exchange of letters has to do with the situation in which the Italian Government was placed by the declaration of Herr von Bülow, the German Minister of Foreign Affairs, before the Reichstag. M. de Bonin, after the speech of Herr von Bülow, asked the Italian Ambassador at Paris if he could make the same statement before the Parliament at Rome, and declare that the Italian Embasssy had never entertained any relations with Dreyfus. He requested the Ambassador to make an inquiry on this subject. This was done. Count Tornielli wrote to the minister that he could say in the Tribune that never had Dreyfus had any direct or indirect relations with the Ambassador, or with the military attaché; but, at the same time, he advised M. de Bonin not to make a similar statement concerning Esterhazy.

But all this was in vain. The court refused to accept the evidence of foreigners—of honorable foreigners I ought to say. By so doing, it placed the French Government in the most humiliating position *vis à vis* of the neighboring Governments, and seemed to say that France wished to retire from the world and live in a proud and haughty isolation; not the isolation of strength, but that which the sick and dying yearn for.

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The court-martial refused to see the evidence brought before them, and yet its meaning was plain enough, even to the most prejudiced mind. Never before in any nation has such a thing happened. Here was a court which knew that the real culprit had confessed his guilt, which had in its possession evidence to show that those for whom the crime had been committed acknowledged the fact, and yet this same court condemned another man instead of the true criminal, smiting so as to protect a culprit and to save a band of criminals from condign punishment. Nor was this all. This same court constantly, throughout the proceedings, took the side of this culprit, and the representative of the Government was actually his apologist.

The verdict of the court produced a stupor in the minds of all men, which, however, will be dissipated to-morrow. The majority of Frenchmen have lived in the belief that the army, as it existed in our country, was reconcilable with democracy. But we are now awakened to the fact that it is not even reconcilable with reason, with justice, with even the most conservative institutions; that is to say, with the Court of Cassation, to take but one example. Now the question is brought squarely before the French people and must be solved—either the clerico-military oligarchy called the army will continue, and then France will gradually fall into the abyss; or the army and the clerical influences which inspire and support it will disappear. Unless the spirit of the army be changed, there will be a deadly conflict between that spirit and the spirit of free inquiry and research. Justice is the life of a nation in things economic, political and moral. If it is to continue to be represented by a caste which tramples under its feet all this in order to follow its instincts, its passions and its prejudices, France is lost. It may be that the verdict of the Rennes court-martial will open a new vista to France. The nation must choose; it must decide whom it will follow, whether the bandits who have just accomplished the most infamous of crimes, or those who, for the past two years, have been struggling every day to preserve the honor of their country. Whichever it does, it is by the example of the latter that France should be judged.

BERNARD LAZARE.

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THE "OPEN DOOR" POLICY IN THE PHILIPPINES.*

BY FRANK D. PAVEY.

THE policy of "an open door to the world's commerce" in the Philippines has been the subject of much discussion during the past year. This policy received formal enunciation at the hands of the Government of the United States, in the course of the negotiation of the treaty of peace between Spain and the United States. The American Commissioners, in reply to a memorandum presented by the Spanish Commissioners, made these statements:

"The Government of the United States is unable to modify the proposal heretofore made for the cession of the entire archipelago of the Philippines, but the American Commissioners are authorized to offer to Spain, in case the cession should be agreed to, the sum of twenty million dollars ($20,000,000), to be paid in accordance with the terms to be fixed in the treaty of peace.

"*And it being the policy of the United States to maintain in the Philippines an open door to the world's commerce,* the American Commissioners are prepared to insert in the treaty now in contemplation a stipulation to the effect that, for a term of years, Spanish ships and merchandise shall be admitted into the ports of the Philippine Islands on the same terms as American ships and merchandise."

The president of the Spanish Commission, in order to make clear the meaning of this proposition, asked the following question:

"Is the offer made by the United States to Spain to establish for a certain number of years similar conditions in the ports of the archipelago for vessels and merchandise of both nations, an offer which is preceded by the assertion that the policy of the United States is to maintain an open door to the world's commerce, to be taken in the sense that the vessels and goods of other nations are to enjoy or can enjoy the same privilege (*situación*) which for a certain time is granted those of Spain, while the United States do not change such policy?"

* The writer is indebted to Judge Charles E. Magoon, law officer of the War Department, for a copy of an able opinion on a kindred topic, from which part of the legal argument has been adapted to this article.

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The president of the American Commission gave the following answer to this question:

"The declaration that the policy of the United States in the Philippines will be that of an open door to the world's commerce necessarily implies that the offer to place Spanish vessels and merchandise on the same footing as American is not intended to be exclusive. But, the offer to give Spain that privilege for a term of years, is intended to secure it to her for a certain period by special treaty stipulation, whatever might be at any time the general policy of the United States."

The treaty of peace, as executed and ratified, contains these Articles:

"Spain cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line: * * * * *

"The United States will, for a term of ten years from the date of the exchange of the ratifications of the present treaty, admit Spanish ships and merchandise to the ports of the Philippine Islands on the same terms as ships and merchandise of the United States."

Under these Articles, the sovereignty of Spain over the Philippines passed to the United States, subject to one limitation. That limitation was a commercial privilege which Spain reserved to herself for the period of ten years. It constituted a "burden upon the fee." The transaction was analogous to a transfer of land subject to a free right of entry for a period of ten years.

The United States accepted the Philippines with this reservation in favor of Spain. By the ratification of the treaty, this limitation upon the sovereignty of the Philippines became part of "the supreme law of the land." No act of Congress is required to give it force and effect. By no act of Congress can the United States honorably deprive Spanish ships and merchandise of rights in the ports of the Philippines, equal in all respects to those possessed by American ships and merchandise.

But can the Government of the United States confer equal rights upon the ships and merchandise of other nations? Has Congress or the Administration power to maintain "an open door to the world's commerce" in the Philippines? In what way can "an open door to the world's commerce" be "opened" in the Philippines?

These questions interest Spain. The answer will determine the exact value of the commercial privilege reserved to her under the treaty. They interest the United States. The answer will determine the probable value of the markets of the Philippines to her

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merchants and manufacturers. They interest all other nations trading in the Orient. The answer will inform them whether they have exchanged competition with Spain, under the protection of a Spanish tariff, for a free field, or for competition with both Spain and the United States under the protection of an American tariff.

The cession of the Philippines by Spain to the United States was accomplished by the execution, delivery and acceptance of an international deed of transfer known as a treaty. The transfer became complete upon the exchange of ratifications of the treaty. Thereupon, the territory transferred became an integral part of the United States. As such, it became subject to the Constitution, bound by its restrictions and entitled to its privileges. No further action by Congress was necessary. The Constitution does not depend upon Congress for authority in any part of the United States. The reverse of the proposition is the fact. Congress must look to the Constitution for authority to legislate for the Philippines.

The Constitution provides:

"The Congress shall have power:

"To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defense and general welfare of the United States; *but all duties, imposts and excises shall be uniform throughout the United States.*"

The treaty with Spain contains no provisions which exempt the commerce of the Philippines from the operation of the Constitution and the laws of the United States, except in favor of Spain. The general enactments of Congress are in force throughout the territorial limits of the United States. When the Philippines came within those territorial limits, they became subject to those laws. The absence of the machinery necessary for the operation of those laws may delay their actual enforcement, but they are nevertheless laws of the land.

The principle that the existing tariff and navigation laws of the United States would be in force in newly acquired territory, without further action by Congress, was recognized in the annexation of Hawaii. The joint resolution of Congress contained this provision:

"Until legislation shall be enacted extending the United States customs laws and regulations to the Hawaiian Islands, the existing customs relations of the Hawaiian Islands with the United States and other countries shall remain unchanged."

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In support of the proposition that these laws apply to the Philippines, we have precedents of administrative interpretation and judicial determination of similar questions presented in the case of the cession of Upper California by Mexico.

In the war with Mexico, Upper California was conquered and San Francisco occupied by the military forces of the United States in the year 1846. Soon thereafter, the President of the United States, as commander-in-chief of the army and navy, authorized the military and naval commanders of the United States forces in California to exercise the belligerent rights of a conqueror, and to form a civil government for the conquered territory. This was done, and tonnage and import duties were levied under a war tariff, established by the military government of civil affairs.

The treaty of peace with Mexico was signed on February 3d, 1848, and ratifications of the treaty were exchanged at Queretaro on May 30th, 1848. Congress did not create the territory embraced in Upper California into a customs district and make San Francisco a port of entry until March 3d, 1849. The collector appointed by the President pursuant to this law did not enter upon the discharge of his duties until November 13th, 1849. In the meantime, notice of the ratification of the treaty reached California on August 6th, 1848. On August 7th, 1848, a proclamation was issued by the military governor, announcing the ratification of the treaty of peace, by which Upper California was ceded to the United States, and on August 9th, 1848, instructions were given to the military collector of customs at San Francisco that "the tariff of duties for the collection of military contributions will immediately cease, and the revenue laws and tariff of the United States will be substituted in its place."

This action was ratified by the War Department by letter dated October 9th, 1848, written by the Secretary of War to the military governor and commander of United States forces in California. This letter contained the following clause:

"But the government *de facto* can of course exercise no powers inconsistent with the provisions of the Constitution of the United States, which is the supreme law of all the States and Territories of our Union. For this reason no import duties can be levied in California on articles the growth, produce or manufacture of any State or Territory of the United States; and no such duties can be imposed in any part of the Union on the productions of California; nor can duties be

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charged on such foreign productions as have already paid duties in any part of the United States."

The Secretary of the Treasury issued the following circular to collectors and other officers of the customs:

"Treasury Department, October 7, 1848.

"On the 30th of May last, upon the exchange of ratifications of our treaty with Mexico, California became a part of the American Union; in consequence of which, various questions have been presented by merchants and collectors for the decision of this Department.

"By the Constitution of the United States it is declared that 'All treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land.' By the treaty with Mexico, California is annexed to this republic, and the Constitution of the United States is extended over that territory and is in full force throughout its limits. Congress, also, by several enactments subsequent to the ratification of the treaty, has distinctly recognized California as a part of the Union, and has extended over it in several important particulars the laws of the United States.

"Under these circumstances the following instructions are issued by this Department:

"First.—All articles of the growth, produce or manufacture of California, shipped therefrom at any time since the 30th of May last, are entitled to admission free of duty into all the ports of the United States.

"Second.—All articles of the growth, produce or manufacture of the United States are entitled to admission free of duty into California, as are also all foreign goods which are exempt from duty by the laws of Congress, or on which goods the duties prescribed by those laws have been paid to any collector of the United States previous to their introduction into California.

"Third.—Although the Constitution of the United States extends to California, and Congress has recognized it by law as a part of the Union, and legislated for it as such, yet it is not brought by law within the limits of any collection district, nor has Congress authorized the appointment of any officers to collect the revenue accruing on the import of foreign dutiable goods into that territory. Under these circumstances, although this Department may be unable to collect the duties accruing on importations from foreign countries into California, yet, if foreign dutiable goods should be introduced there, and shipped thence to any port or place of the United States, they will be subject to duty, as also to all the penalties prescribed by law when such importation is attempted without the payment of duties.

"R. J. Walker,
"Secretary of the Treasury."

The expression, "although this department may be unable to collect the duties accruing on importations from foreign countries into California," is understood to refer to the small military force at the command of the military governor. The doubt was produced by his report, dated August 14th, 1848, wherein he informs

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the War Department of his action in reference to the collection of duties, calls attention to the depletion of his forces by lawful discharges and desertions due to the "gold fever," and says:

"In the meantime, however, should the people refuse to obey the existing authorities, or the merchants refuse to pay any duties, my force is inadequate to compel obedience."

Importers interpreted the circular issued by the Secretary of the Treasury to mean that foreign productions could be imported into California free of duty, and they prepared to land such goods in defiance of the law. The military governor requested the assistance of the naval forces of the United States in enforcing the law. The importers asked the officer in command of the naval forces of the United States then in the Pacific Ocean to what extent he would enforce the orders of the military governor, and they directed his attention to the Walker circular and other matters which, they claimed, established want of jurisdiction by the military governor. The reply was that he would support the military governor to the full extent of the forces at his command.

This closed the constitutional debate between the importers and the military and naval officers of the United States. The importers paid the duties under protest and appealed to the courts. They brought suit to recover from the collector the moneys so paid under protest. There was no controversy as to the facts. The rights of the parties to the action depended upon the law. The Supreme Court of the United States judicially determined the status of the territory ceded by Mexico, from the time of its invasion in 1846 to November 13th, 1849, when the collector appointed by the President, according to law, entered upon the duties of his office; its relation to the United States at various intervals during that period; the character of the civil government maintained therein by the military authorities, after the exchange of ratifications of the treaty of peace and cession; and the right of the civil government of the ceded territory to impose tonnage and import duties in accordance with and by virtue of the general tariff laws of the United States, without Congressional action extending them over the new territory.*

In its decision the Court says:

"By the ratifications of the treaty, California became a part of the United States. And as there is nothing differently stipulated in the

*Cross *et al. v.* Harrison, 16 How., 164.

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treaty with respect to commerce, it became instantly bound and privileged by the laws which Congress had passed to raise a revenue from duties on imports and tonnage. * * * * *

"The right claimed to land foreign goods within the United States at any place out of a collection district, if allowed, would be a violation of that provision in the Constitution which enjoins that all duties, imposts, and excises shall be uniform throughout the United States. Indeed, it must be very clear that no such right exists, and that there was nothing in the condition of California to exempt importers of foreign goods into it from the payment of the same duties which were chargeable in other ports of the United States."

Strike out the word "California" in this quotation and insert the word "Philippines," and we have the conclusion of the whole matter. The decision is so pertinent to the question under consideration that no argument is needed to show its controlling force.

It is necessary at this point to refer to the situation existing at present in the Philippines.

By order, dated July 12th, 1898, the President, as commander-in-chief of the army and navy of the United States, prescribed a certain tariff of duties and taxes, to be levied and collected, as a military contribution, upon the occupation and possession of any ports and places in the Philippines by the forces of the United States. That order never has been revoked. Modifications, if any, have been made by the general in command of the United States forces in those islands, and have been due to the necessities of the military operations.

The Peace Protocol of August 12th, 1898, provided that the United States would hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which should determine the control, disposition and government of the Philippines. That treaty was signed at Paris on December 10th, 1898; its ratification was advised by the Senate on February 6th, 1899, and it was ratified by the President on February 7th, 1899. The exchange of ratifications took place at Washington on April 11th, 1899. The Philippines then passed under the Constitution and general laws of the United States. Under normal conditions, they would have become at once subject to the burdens and entitled to the benefits of that Constitution and those laws.

But normal conditions did not and do not exist in the Philippines. Aguinaldo began his attack upon the American forces on February 4th, 1899, two days before the Senate voted in favor of the ratification of the treaty of peace. From then until now, those

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islands have been in a state of actual war. As a matter of military necessity, the President could establish, as a war measure, a blockade or any form of prohibitive or special tariff. The continuance and present enforcement of the military tariff of July 12th, 1898, may properly be considered such an act of military authority.

What interests commerce is the situation which will exist in the Philippines as soon as they have been restored to a state of peace and quiet sufficient to permit the resumption of actual commercial intercourse, in accordance with law, between those islands, the United States and other countries.

From the premises the conclusions are simple:

1. "An open door to the world's commerce" can be "opened" in the Philippines in one of two ways only;

(*a*) By an amendment to the Constitution, exempting the Philippines from the operation of the provision that "all duties, imposts and excises shall be uniform throughout the United States," or,

(*b*) By an act of Congress making every other port of the United States "an open door to the world's commerce."

The former method would require the initial assent of two-thirds of both houses of Congress, or of the legislatures of two-thirds of the States, and the subsequent ratification of three-fourths of the several States. The latter method would be an entire overthrow of the present tariff policy, and would involve the destruction of the present industrial and commercial system of the United States.

Neither the Republican nor the Democratic party, alone, could carry out the former method; neither would carry out the latter.

2. Under the present Constitution, the ships and merchandise of the United States will pay no tonnage or import duties in the ports of the Philippines. Under the treaty, Spanish ships and merchandise will be admitted to the ports of the Philippines on the same terms. They will pay no tonnage or import duties for the term of ten years.

3. The ships and merchandise of all other countries will pay the same tonnage and import duties in the ports of the Philippines as they pay in the ports of San Francisco or New York.

4. For the present, "an open door to the world's commerce" in the Philippines is a political myth.

FRANK D. PAVEY.

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THE DRAMATIC FESTIVALS OF ORANGE.

BY JULES CLARETIE, ADMINISTRATOR-GENERAL OF THE *COMÉDIE FRANÇAISE.*

THERE exists in France an admirable Roman ruin or rather—for the monument is no longer a ruin but stands to-day in all its solid majesty—an ancient theatre whose picturesqueness and beauty cannot be too highly praised. It is the theatre of Orange in the Department of Vaucluse. The celebrated theatre of Vicenza, the superb Greek theatre of Taormina, with its wide gaps, breaches made by time, and its columns rising up against the blue horizon of the Sicilian sea, are not more interesting from an architectural point of view, and are less available for dramatic representations than this marvellous monument, which, like the arenas of Arles, was so long closed in by mean-looking buildings, and which Caristié, a member of the Institute of France, and an architect of the rarest talent and of faultless erudition, disencumbered, brought back to light and, if I may use the term, revealed.

Caristié, whose bust has been placed in front of this Roman theatre which he restored to life, as it were, was the uncle of an artist of the *Comédie Française*, who very properly took a distinguished part in the performances at Orange, and who has now retired from the stage. M. Caristié Martel, an actor of great merit, excellent as the old Don Guridan in "*Ruy Blas*" and as the general in "*Le monde où l'on s'ennuie,*" a poet also in his "moments of inspiration," had gone on the stage and become a comedian contrary to the wishes of his uncle; but it was reserved for him to attend and contribute to the triumph of the architect Caristié, when, in the presence of Minister Barthou, I unveiled the Caristié monument in front of the ancient theatre of Orange.

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This theatre, I repeat, is superb, standing as one of the proudest examples of what the builders of ancient Rome could do. Its high, colossal walls rise up intact, in front of the stairs built against a hillside, whose steps have been repaired with care. The theatre of Bacchus at Athens, where M. Homolle had proposed to represent "*Oedipe Roi*," to celebrate the fiftieth anniversary of the *École Française*, is a ruin, an admirable ruin, to be sure, but still a ruin; the Roman theatre of Orange is now practically unimpaired. The proscenium is there, the stage, the doors of entrance for the actors. A fig-tree, which has grown among the stones, gives an appearance of life and a note of nature to this gigantic structure. Behind this fig-tree, shaken by the *mistral*, the south wind, I concealed the orchestra during the representations of the antique dramas, and nothing can equal the effect—no painting, no scenery—of this waving foliage, of these gnarled branches, out of which seemed to issue, as from an immense and fantastic nest, the melodies of Camille Saint-Saëns for "*Antigone*," the music of Edmond Membrée for "*Oedipe Roi*!"

M. de Gasparin, who published a history of the city of Orange in 1815, which is now of documentary value only, describes this theatre and its wall surrounded by modern buildings, which concealed them at that time. He states, for example, that to obtain an idea of the wall of the circus, it must be examined "at M. Davadan, the wheelwright's," or, still better, by "going into the dirty poultry-yard where a part of it is to be seen." In 1815, the wall formed a part of the Chamoux house. It was Caristié, as I am fond of repeating, who reclaimed this admirable monument from the "*infected*" buildings, to use M. Gasparin's expression, which shut it in, and now as in the past six thousand spectators can listen to an antique drama within this gigantic enclosure.

The theatre had two tiers of steps, seven steps in each tier. It has been restored as it was originally. The sculptor, Injalbert, has just sent to Orange a marble monument representing "The Soul of Antiquity Handing the Torch of Art to the Genius of the Present Day." M. Injalbert is a Southern sculptor, who constructed a monument to Molière for the town of Pézénas, which the mayor and the councilors of that town unveiled two years ago in presence of the *Comédie Française*. When the mayor of Orange informed the municipal council, the other day, of the arrival of M. Injalbert's group, he added that the block weighed

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about 12,000 kilogrammes, and that it would be inaugurated when the next performances took place. Of the artistic value of the work he said nothing. But M. Injalbert's name is a sufficient guarantee of the beauty of the sculpture. "The Soul of Antiquity," however, to explain the symbolism, is the ancient theatre of Orange revived by the "Modern Genius." Of old, this theatre was accustomed to great spectacles addressed to the eyes, rather than to productions designed to elevate the soul. It was, if I may say so, something like a gigantic music-hall. The genius of modern times is in this sense truly more artistic than the "Soul of Antiquity."

Formerly, on this stage, now brilliant with the talent of the *Comédie Française* and the Opera, the spectacles given to the crowd were those of which Horace speaks: *"Omnis ad incertos oculos et gaudia vana;"* combats of bears or gladiators, "transitory spectacles that teach nothing," "vain joys!" At the present day, admirable pieces are performed before the crowd; and the Orange spectators, though a multitude, are treated as if they were a select few. Those who have observed how this public listens, how it understands everything, how artistic it is and what a literary instinct it has, have been able to convince themselves that it is, indeed, worthy of the pains taken to give it pleasure. Its joys are no longer the *vain joys* of which Horace speaks in his epistle.

And this is why it was deemed expedient that the restored ruin of this old Roman theatre should be visited every year by a distinguished company, who should give to the thousands of people assembled before the immense wall some performance of the highest merit. The impression produced there is in fact quite different from that in an enclosed hall. There is felt a peculiar sensation; all that is complicated in the setting, the art of artistic tapestry, if I may use the term, is absent, and we find ourselves face to face with the master-piece under primitive conditions. The performance thereby becomes both more wholesome and more striking. The effect is deeper and, strange to say, the acoustic properties are so admirable that not a syllable of the dialogue is lost. Even Molière's comedies have been represented there, and that with an effect as intense as in a closed hall.

The State has granted its official sanction, in some measure, to these representations, which are called "national" in order to give prominence and notoriety to the festivals. As a matter of

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fact, they are first of all Provençal. The municipality of Orange, until now, had taken an interest in these artistic performances, and the town had certainly found them profitable, by reason of the immense concourse of people that poured into the city on festival days from the surrounding region. The trains from Avignon, Nîmes, Tarascon, Valence and even Marseilles brought to Orange thousands of travellers, who gathered on the steps of the theatre to enjoy Sophocles and ancient art. Then, all at once, the mayor of Orange manifested a certain repugnance to continuing his official relations with these performances. A Commission on Orange Festivals was then appointed by the Minister of Fine Arts, which met in a hall of the Ministry of Public Instruction in Paris and decided to form a "Society of the Friends of the Orange Theatre," whose charter has recently been published.

This purely artistic association, in which political and religious discussions are prohibited, has for its purpose to aid in periodical organization of "national representations" at the ancient theatre of Orange, and to encourage "displays of art in conformity with Graeco-Roman traditions." Its patrons include illustrious names in all branches—learned men, like M. Gaston Boissier, the permanent secretary of the French Academy; architects, like M. Formigé, who was appointed by the Government to conduct the restorations of the Orange theatre; journalists, like M. Henry Fouquier, the honorary president of the Southern Society of the *Cigatiers*; musicians, like M. Massenet and M. Ernest Royer; dramatic authors, like M. Victorien Sardou. The list would not be complete without Frédéric Mistral, the poet of *Mireille,* "the king of the South"—Mistral, the Napoleon of the Félibres, one of whose disciples compares his soft felt hat to that of the first Emperor.

The ministerial commission has appointed M. Paul Mariénto to take charge of the representations in the ancient theatre, and he has entered upon his functions this year. It is no sinecure to organize representations at Orange, as the writer of the present article can testify. On the two occasions, in 1895 and 1897, when the *Comédie Française* played *"Oedipe Roi"* and *"Antigone"* at Orange, we had to mobilize, as it were, quite an artistic army corps of comedians, machinists, choristers, musicians, costumers, hair-dressers, mutes. Numerous cars were required to

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transport all this force from Paris to Orange. It was difficult to dress in the old theatre. There were no dressing-rooms for the actors. Antigone and Tiresias arrived at the theatre in costume, passing through the town from their hotel in *peplos*. The spectacle was a curious one and unexpectedly picturesque.

M. Mariéton encountered difficulties at the outset, of which those unfamiliar with the practical management of a theatre can have little idea. He is a literary man of talent, a real poet and a very intelligent critic, who has published a volume on the *amours* of Alfred de Musset and George Sand, which is, perhaps, a little indiscreet. In his maiden attempts as an impresario, he ran up against the caprices of that admirable artist, Mme. Sarah Bernhardt. Mme. Sarah Bernhardt was to go to Orange to play two pieces, Racine's *"Phèdre"* and the *"Médée"* of M. Catulle Mendès. She had even informed the author of *"Médée"* to that effect through an enthusiastic telegram. But what happened? Sarah Bernhardt played neither *"Médée"* nor *"Phèdre"* and M. Paul Mariéton would have been seriously embarrassed if M. Baduel, a director of a travelling company, had not offered him *"Athalie"* completely mounted, and if M. Paul Mounet had not brought him a translation of *"Alcestis"* by M. Rivollet, which they were able to mount hurriedly for the thirteenth of August. I authorized M. Paul Mounet to interrupt for a few days his services at the *Comédie Française,* so that this excellent tragedian (the younger brother of M. Mounet-Sully) might be able to assist the Orange representations with his talent and, plainly speaking, to save them.

By this time, the Greek *"Alcestis"* and Racine's *"Athalie"* will have been represented before a faithful public; also a piece in verse by M. H. de Bornier, the author of *"La Fille de Roland,"* not to mention *"Ô coupo santo!"* the famous cup-song, sung by the beautiful M'lle. Hatto, who has just received the first prize in the singing contest at the Conservatoire, and who resembles Mme. Caron, the creator of Salammbô.

These artistic festivals are, moreover, becoming summer recreations for our provinces. At Beziers, they performed *"Déjanire,"* by Saint-Saëns, last year, and they are giving it again this year. In the *Arènes* of Arles they have recently performed Gounod's *"Mireille"* with success. But it was at Orange that the first attempt at artistic decentralization in this direction was made

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twenty or more years ago, thanks to the initiative of remarkable men, such as Ripert, whose name as a man of letters will deservedly survive, and Antonin Réal, a poet and scholar whose bust will be unveiled this year by the poets of Provence. These pioneers conceived the idea of having ancient works mounted on the ancient stage. The singer, Boudouresque, interpreted Médul's *"Joseph,"* which two Parisian theatres, *l'Opéra* and *l'Opéra Comique*, are representing at this moment. The effect was great. Then M. Silvain of the *Comédie Française* played *"L'Empereur d'Arles,"* a drama composed by a Southern poet; and finally, one day, during one of the annual *félibrées*, which the poets of Provence have instituted (literary and artistic tours through the province, unveiling of statuettes and recitation of poems), M. Mounet-Sully came and played *"Oedipe Roi,"* without scenery, before an enthusiastic multitude. From that day, the Orange representations were an established institution.

It appears that on the first evening there was an admirable effect which had not been foreseen. At the most pathetic moment of the drama, a raven, disturbed in his nest, issued from the ruins and hovered like a living symbol of black misfortune over the victim of ancient fatality. This raven croaking over Oedipus added a striking note to the most awful tragedy of the past. And it was an impression that will not repeat itself, a unique artistic accident.

The Orange representations owe much of their fame to this raven. When *"Oedipe Roi"* was again played at Paris, many theatre-goers sighed and said: "Unfortunately, there is no raven! This raven was the culminating point of the tragedy. Who will give us back the raven?" Notwithstanding their sincerity there is a certain fastidiousness in all these exclamations. Sophocles is admirable even without a raven. But even the excellent Francisque Sarcey regretted sometimes that we could not have the flight of the raven, which added to the ancient tragedy a new, fantastic and more modern terror after the manner of Edgar Allan Poe.

We also had another artistic sensation, which only the open air and the wind can produce, when M'lle. Bréval, in antique costume, sang a prologue which the composer, Camille Saint-Saëns, had set to music. That evening the *mistral* (the wind this time, not the poet), blew with violence. M'lle. Bréval was standing

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before the audience in her *peplos*, when the breeze caused its folds to cling to her body and to flutter out behind her shoulders like wings, while the lower part of the garment seemed like a shroud lashed by the north wind. Thus the beautiful, tall girl, standing on the stage of the Roman theatre gave us the impression of antique statuary come to life. The sculptors were filled with enthusiasm. It seemed to them that the Victory of Samothrace stood before them, standing on the prow as in the Louvre, but in flesh and blood, breathing and singing.

These are surprises that are not afforded by ordinary performances, where everything is arranged beforehand by the stage director. But if we are sometimes indebted to the unforeseen, it is also sometimes to be dreaded. A slight shower might change a triumphal representation into a disaster. Wet peplums soon turn to limp rags. And then, alas, a kind of artistic high mass would easily resemble a vulgar masquerade. This year they are to play not by night, as we did, but at sunset. It seems that at that hour the heat accumulated in the colossal wall on which the sun has shone all day is so great that its reflection makes it impossible to stand within several yards of it. We shall find out whether the actors have been able to play, notwithstanding this torrid atmosphere and these condensed and reflected rays. It is certain that every performance in an ancient theatre should be in the day-time. And yet, "the obscure brightness of the stars," as Corneille has said, may suffice to illuminate such a representation and endue it with an added charm and poesy.

That was, indeed, my opinion and intention four years ago, when I gave "*Antigone*" in Orange. The steps and the stage were lighted with immense electric lamps, suspended from gigantic poles and projecting their rays on the proscenium. At a given moment, I had the electric lights turned off. The effect was superb; the actors of "*Antigone*" appeared in the clear night and under the stars, as though bathed in that moonlight which, according to Heine, constitutes the attractiveness of Shakspeare's heroes and heroines. We then had several minutes of mysterious and exquisite art.

Unfortunately, it was necessary to turn on the lamps again, and that for a reason that was not at all artistic. At that very hour, Casério, President Carnot's murderer, was in his dungeon at Lyons awaiting the execution of the sentence which had con-

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demned him to death; and, in the first row of the spectators, we had the Minister of Justice, whose duty it was to see that the sentence should be carried out—which was done five or six days later. It was feared that anarchists might profit by the darkness to attempt some violence, and so it happened that Casério, by compelling me to turn on the electricity, deprived Sophocles of the soft, poetical light of the starry summer sky.

I do not know how M. de Bornier will have celebrated the "soul of antiquity," sculptured also by M. Injalbert; but two years ago, a talented poet, who died last year and whose bust the *Félibres* are going to inaugurate at Valence, like that of Antoine Réal this season, had very intelligently symbolized these representations at Orange in a prologue that I asked him to compose. His name is Louis Gallet, the author of a considerable number of opera librettos, and he gave to his prologue the title, "The Festivals of Apollo." This would, indeed, be a very proper title for these performances. It is certainly Apollo that is celebrated there.

Poor Gallet had imagined a Faun asleep in the ruins of the ancient theatre and awakened by the accents of *La Cigale*, the nymph of Provence, personifying the Popular Muse. Then there appeared before him an Arlesian girl representing Provence; another, Music; still another, the Gallic Muse; and, finally, a figure holding a tri-colored flag in her hand symbolized France. The pretty girl of Arles and the Muse of our country spoke in verses which roused the old Faun to enthusiasm, and the prologue concluded with lyric verses of much vigor. The same evening they gave also Leconte de Lisle's fine piece, "*Les Erynnies*," and the verses of the poet joined to the music of Massenet had a marvellous effect.

This year the "*Alcestis*" of Euripides, adapted by M. Rivellet, will no doubt have produced a similar result. I doubt, however, if the newspapers will devote as many articles to these representations of 1899 as they did to the *soirées* of 1897. In the first place, Francisque Sarcey is no longer there, to make himself the admirable courier of art and place his renown at the service of these experiments. And, then, the Dreyfus case will have absorbed the whole attention of the public this August. The drama of the case at Rennes is as poignant as the tragedy that will be played at Orange. And Dreyfus is closer to us than

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Athalie. Politics has often interfered with these artistic manifestations. I have already mentioned the project of M. Homolle, the director of the *École Française* in Greece, to give a representation of *"Oedipe"* in the theatre of Bacchus at Athens. It was right and proper that such a representation should take place. All the obstacles had been overcome. I had ordered special scenery for Athens, the model of which is before me as I write these lines. The Turco-Grecian war broke out and put a stop to everything. The verses of Sophocles were drowned by the roar of cannon. This time Euripides will have for a competitor, not cannon, but the voice of Maître Demange, Dreyfus's lawyer, or the voice of Maître Labori. In this way the actual interest of the *present* tampers with the productions of ancient art.

But the Orange representations, hitherto so glorious and so impressive—with an entire people demanding a tragedy in the open air—these festivals of intelligence and art are none the less well established. On the 12th and 13th of August, in the opening prologue of the present season of 1899, M. Henri de Bornier celebrates the institution of a Graeco-Latin cycle which is now to be held yearly at the ancient theatre of Orange. This shows the programme and the hope of the Festival Commission. It is to found a theatre in this marvellous setting, in a place where during the memory of man it has hardly ever rained in the month of August, in the country of Tartarin (and, by the way, it is proposed to take advantage of the occasion to attach a commemorative tablet to the old mill where Alphonse Daudet wrote his *"Lettres de mon Moulin"*), where the people, the artists, the strangers, the poets may come every year to listen to beautiful verses, music and dramas spoken and sung by illustrious artists; in one word, to create in our country, in the land of Provence, what may be called by one expressive name—a French Bayreuth, the Bayreuth of the Graeco-Latin soul, with Æschylus, Sophocles, Euripides, Racine, Corneille and Hugo for sponsors.

And as the Faun of the Festivals of Apollo said, while the orchestra was playing Magali's song which interrupted the *Marseillaise:*

> **"Speak to us, Poets; now the Play's commencing!**
> **These leafy solitudes no more entrance.**
> **Thou, God of verse, be lord of earth forever,**
> **And you, applaud, Athenians of France!"**

JULES CLARETIE.

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IS CIVIL SERVICE REFORM IN PERIL?

BY PROFESSOR JOSEPH FRENCH JOHNSON, OF THE UNIVERSITY OF PENNSYLVANIA.

FOR the first time since the enactment of the Civil Service law in 1883, a President of the United States has seen fit to exempt a considerable body of public servants from its requirements. The statute itself placed 13,924 Government positions in the "classified service," providing that appointments should be made subject to competitive examination. Mr. Cleveland added 7,259 in his first term, and 41,768 in his second term; Mr. Harrison added 8,690; the total additions to the classified service by executive action being thus 57,717.* Meantime, by natural growth, the number of classified places had increased by 15,467, so that, when President McKinley was inaugurated, of the 178,000 places in the executive Civil Service, 87,000 were subject to the Civil Service law and rules. Of the 91,000 employees not classified, 8,850 were laborers, whose classification is expressly forbidden in the law; some 5,000 were Presidential appointees, confirmed by the Senate; 66,725 were fourth-class postmasters; 4,810 were clerks in post offices not having free delivery; and 5,570 were in places specially excluded from classification by the rules.

President McKinley has, apparently, not faced in the same direction as his predecessors. Instead of extending the sway of the competitive test, he has restricted it. On July 27th, 1897, he added a few places at the small customs ports, but, at the same time, he "excepted" some five hundred "confidential" posts in the customs and internal revenue services; while, on the 29th of last

*These figures make it appear that the Republicans have placed 22,614 positions in the classified service, and the Democrats 49,027. The Republicans, however, claim that they should have credit for the classification of the 10,383 employees in the railway mail and navy yard services, although these were nominally brought under the rules by Mr. Cleveland.

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May, he issued an order "excepting" from competitive examination the appointees to between 8,000 and 10,000 offices.

To any one who can recall the long and, at times, desperate struggle against the spoils system, the days when the people were indifferent and politicians were insolent, the abortive budding of hope under Grant and Hayes, and at last the rooting of the despised plant of reform in the blood of Garfield, it is not strange that the veteran fighters for the merit system, who have supposed their victory won, are aroused and alarmed by the action of President McKinley. His order, with its exceptions and its modifications of the rules, has seemed to them a malicious and dangerous blow at the heart of the tree they have planted and watered.

Is their alarm well grounded? Has the President changed the Civil Service rules to please the office broker and, perhaps, to better his chances for a second term? Or, has he made changes solely with an eye to the improvement of the service? Has he struck at the roots of the tree, or has he merely trimmed exuberant foliage, in order that the tree may bear better fruit?

One cannot understand the order of May 29th without some knowledge of Mr. Cleveland's sweeping order of May 6th, 1896. Prior to the latter date, the classified service embraced, in the main, custom houses having at least fifty employees, all post offices with free delivery, the railway mail service, the internal revenue service, the Government printing office, school employees or physicians in the Indian service, the weather bureau, and some 10,000 places in the Departments at Washington. Mr. Cleveland's order of May 6th, 1896, added to this list practically everything possible, except fourth-class postmasters and employees in post offices not having free delivery. With these exceptions, it was a blanket order, including all persons in the executive Civil Service, in and outside of the District of Columbia, "of whatever designation and whether compensated by a fixed salary or not."* This order made the competitive examination the law of appointment in over 30,000 places which had previously been independent of the Civil Service law and rules. It was quite evident that many places had been included which ought not to be subject to a competitive examination. Mr. Cleveland recognized this fact and immediately made exceptions, the most important of which

*Persons employed as mere laborers or workmen, and those whose appointments are subject to confirmation by the Senate, were necessarily excepted, as they are not classifiable under the law.

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were in the Indian, customs, internal revenue and post office services.

President McKinley now makes further exceptions, and they are defended on the ground that, for the positions affected, experience has proved the competitive test to be impracticable. Intelligent criticism of the order making these exceptions is impossible, unless one knows the nature of the places concerned and the kind of tests which have been substituted for the competitive. I propose, therefore, to discuss these excepted places in detail, and, for convenience, I will group them according to the new tests that have been imposed. They fall naturally into four classes. The first class, containing about 6,500 places, are subject to a registration test. The second class, about 1,600 places, are subject to a non-competitive examination conducted by the Civil Service Commission. The third class, about 125, are subject to examinations under special regulations approved by the Civil Service Commission. The fourth class, about 1,500, are subject to no test, the will of the appointing officer being final.

The first class, containing some sixty-five hundred positions, belongs exclusively to the War Department. It includes mechanics and skilled laborers in four departments at large of the United States Army, namely, the quartermaster's, the medical, the ordnance and the engineer departments. The clerical force of these four departments is left, as heretofore, under the control of the Civil Service Commission, but all positions requiring mechanical skill will hereafter be filled in accordance with registration tests of fitness. In explanation of this change, it is said that President McKinley has done with these departments exactly what President Harrison did with the navy yard service in 1891. At that time, no employee in the navy yards was subject to the Civil Service rules, and the boss politician had had his way to such an extent that first-class work was impossible. Secretary Chandler in 1882 declared that, whatever might be done with the hulls of our new vessels, the engines could not be constructed by the navy yards until the sway of machine politics had been destroyed. In 1892, one year after the establishment of the new system, Secretary Tracy said, in his annual report, that "the work performed under this order is of the highest finish and quality, and no doubt is now entertained of the capacity of our working yards to accomplish any task in the way of naval construction or

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repair." His Democratic successor, Secretary Herbert, reported in 1894 as follows:

"The system of employing workmen at navy yards through a Board of Labor, taking them without reference to politics and in the order of their application, continues to be commended without exception by all naval officers and others whose duties have brought them in contact with it. The labor has so increased in efficiency that many of the superintending officers contend that the Government can now fairly compete with private concerns in the cost of constructing vessels and machinery."*

It is significant that the Civil Service Commission, in its annual reports, has always referred to this change in the navy-yard service as an adoption of the merit system. It appears that President McKinley has simply ordered that a similar system shall now be adopted in the four departments at large of the United States Army. I understand, in fact, that, some time before President McKinley's order was issued, steps had been taken for the adoption of such regulations. During the war with Spain, when an increase in the service was imperative, it was found impossible promptly to get employees through the machinery of the Civil Service Commission. At such times, men are wanted quickly, and it would certainly seem wise that their selection be made by Boards of Employment at the yards themselves. The positions affected by the new order are those for which an educational test is of no value; such as packers, forage masters, weighers, rodmen, torpedo keepers, blacksmith's helpers, carpenters' helpers, gauge readers, etc. During the war, packers, for instance, were in great demand in the medical and quartermaster's departments, but it was difficult to get them. There were men enough in the country who understood the art of packing, but they had employment, and they were under no inducement to offer themselves to the Civil Service Commission for a competitive test, in order that they might be available for service in the War Department; and the offer of a temporary appointment was no temptation at all. The order, so far as it concerns these departments, certainly seems a proper one.

It should be borne in mind that such positions as assistant

*The navy-yard regulations provide for a distribution of the positions in the navy-yards under separate schedules, each applicable to the particular work of the grade. Persons desiring to enter that service register their names with the proper Board and file their certificates of character and experience in their trades. Their names are entered upon a register, and, when persons are required for work, they are taken in the order of their standing. It is understood, and generally believed to be true, that the politics of candidates are not taken into consideration.

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engineer, transit man, computer, clerk, typewriter, etc., which lend themselves to an educational test, have not been disturbed, but are still subject to the rules of the Commmission. It should further be noted that the analogous system in the navy-yards has met with such general approval that, in 1896, it received the formal endorsement of the Civil Service Commission, and was adopted as part of the regulations of that body. President Cleveland, at the same time, ordered that no modifications should be made without the approval of the Commission. The query naturally arises, why did not President McKinley place these four army departments also under the Civil Service Commission? Here is a chance for criticism, but it does not strike me as important. In the first place, the navy-yard regulations have been devised and put in force entirely by the Navy Department itself. In the second place, the Commission has no power to make changes; it may simply interpose a veto. Under the rules relating to the army departments, this power of veto is in the hands of the President. It is not improbable that the new army regulations, after they have had a trial, will be approved by the Civil Service Commission, and that the army departments will thus be placed upon the same basis as the navy-yards, under regulations that will be satisfactory in peace and elastic in war. It is claimed that the Civil Service Commission, with its present resources, is already so overburdened that it could have given only nominal attention to the re-organization of the army departments. However that may be, I do not think we can criticise the President for pursuing, with regard to the army, a policy which has already been ratified by success in the navy.

The new rules affect about fifty other places in the War Department. They are positions in the national military parks at Gettysburg, Shiloh, etc., such as secretaries, historians, rodmen, guardians, carpenters and painters. So far as I can learn, there have been no changes in these posts for ten years. They are usually filled by veterans of the Civil War, selected, as far as possible, from the neighborhood of the parks. I fail to see any good ground for criticising the change affecting these places. I understand that it was recommended by the Civil Service Commission.

The second class of positions affected by the amendments of May 29th embraces those in which the competitive test has been supplanted by the non-competitive. The list includes deputy

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naval officers, deputy surveyors of customs, deputy collectors of internal revenue, store-keepers and gaugers whose annual compensation does not exceed $500, and "persons of eminence" appointed to positions requiring "peculiar qualifications in respect to knowledge and ability." Henceforth, persons will be selected for these positions at the pleasure of the appointing officer, but they will not be sworn into office unless they can satisfy the Civil Service Commission of their fitness, by passing an examination "equivalent to the (competitive) examination held by the Commission for places of like grade."

For the mere "pass examination," the Civil Service reformer entertains just contempt. As every teacher knows, there is often a wide gulf between students who merely "pass" and those who achieve "excellence" or "distinction." It is, perhaps, too much to say that this gulf marks the difference between competency and incompetency, yet college authorities are usually loath to recommend to a place requiring much intellectual ability a graduate who has only "just passed." It is a wise provision, therefore, of the Civil Service law, which compels an appointing officer to make selection from the candidates who head the list of eligibles. The mere fact that appointees are obliged to "pass" an examination, is not in itself evidence of regard for the principles of Civil Service reform. There must also be proof that the non-competitive test is inapplicable.

The deputy collectorships of internal revenue are the most important group of officers in this class. There are about nine hundred deputy collectors, and they handle each year over $270,000,000 of the people's money. Their duties call for mental and moral qualities of a high order, incorruptible vigilance and sound mathematics being particularly important. They are well-paid officials, and, unless some good reason exists to the contrary, it seems clear that they should be selected by competitive examinations. Under the new rules, however, they are appointed by the collectors, and are required merely to get a "pass" mark in a non-competitive examination.

In explanation of this apparent departure from the path of reform, it is said that the legal right of the President to classify deputy collectors of internal revenue is questioned, and that, in consequence, much confusion has resulted. Section 3,148 of the Revised Statutes vests the power of appointment and removal of

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deputies in the collectors themselves, and provides also for their compensation by the collectors. This section is older than the Pendleton Act of 1883, and is evidently not in harmony with it; for no restriction whatever is placed upon the power of removal, except the requirement that such notice be given "as the Commissioner of Internal Revenue may prescribe."

Several collectors, during the last two years, have taken advantage of what seemed to be their rights under Section 3,148, and have made removals and appointments in disregard of the Civil Service rules. The Civil Service Commission has vigorously protested, several dismissed deputies have complained to the United States Circuit Court, and the auditor of the Treasury Department has endeavored to "hold up" the accounts of deputies appointed without regard to the Civil Service rules. But the courts, as a rule, have declined to grant relief, holding that the Civil Service rules are not equivalent to law, and that, furthermore, a court in equity has no power to restrain either the appointment or the removal of public officers. Judge Jackson, of the District of West Virginia, has taken a contrary view, but the weight of judicial opinion seems to be favorable to the collectors. Whatever the merits of the question, it is clear enough that the legal status of deputy collectors was in doubt, and that a change of some sort was necessary. If the deputies are not to be appointed under Section 3,148, then Congress should make the fact clear by its repeal. With that section still on the statute books, the President seems to have adopted the only possible means of clearing the atmosphere and ending the confusion. He has simply placed all the deputies on the same basis, subject to Section 3,148, and not to the Civil Service rules.

The foregoing explanation does not satisfy certain critics of the President. They insist that Judge Jackson's view of the matter is correct, and they make a point of calling attention to the fact that, under the preceding administration, "the internal revenue service was wholly subject to the Civil Service rules," Mr. Cleveland's collectors not having sought to disrupt and debauch it by appeal to Section 3,148. It is worth while to indicate why the status of deputy collectors of internal revenue was not discovered to be uncertain while Mr. Cleveland was President. The internal revenue service was not "classified" until December 12th, 1894, nearly two years after Mr. Cleveland's second inaugu-

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ration. All the collectors were Democrats and so, very likely, were their deputies. From a Democratic point of view, the service was ripe for classification, just as was the free delivery post-office service, from a Republican point of view, when Mr. Harrison placed it under the Civil Service rules in 1893. The reasons why Mr. Cleveland's collectors did not seek freedom under Section 3,148 are quite obvious; and it is equally obvious that President McKinley's collectors must, at the outset, have been sorely tempted to test, to the utmost, their power of appointment and removal under that unrepealed section of the Revised Statutes.

No good objection can be raised to the other exceptions made in this class of employees, who are henceforth to be subject to a non-competitive examination. The exceptions in the customs service apply to a single deputy surveyor or naval officer at each port, and are clearly proper. As for the store-keepers and gaugers, whose time is not all employed, and whose compensation cannot exceed $500 a year, it is easy to accept the explanation that few worthy persons will compete for such places, and that the Civil Service Commission has been unable to supply candidates. The rule providing for the appointment of "persons of eminence" is practically a copy of the rule which has been followed in the Civil Service of Great Britain for thirty years.

The third class is unimportant, so far as numbers are concerned. It includes about seventy-five employees in the mints and assay offices, and about fifty persons employed by the Navy Department as special mechanics and civilian assistant inspectors, where work is being done by contract for the Department. The positions in the mint consist of one chief clerk in each mint or assay office, who is authorized by law to act for the superintendent or assayer during his absence; one private secretary or confidential clerk to the superintendent, one cashier, one deposit-weigh clerk, one assistant coiner, one assistant melter and refiner, and one assistant assayer in each mint or assay office. These positions will be subject hereafter to tests of fitness prescribed by the Director of the Mint. With regard to the chief clerks and private secretaries, it seems to me there is no room for criticism. The superintendent should have, in those positions, men in whose character he has implicit confidence. The cashier, for whose honesty the superintendent may be held responsible, should also be his selection. As for the deposit-weigh clerk, he is a man who, by care-

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lessness or dishonesty, could get the superintendent into infinite trouble. The other exceptions made in this branch of the Service seem intended to give superintendents the power to place a few persons in whom they have confidence in important posts throughout the mint and assay offices. It cannot be concluded that these changes will bring incompetent persons into the mints and assay offices. They must all pass examinations approved by the Director of the Mint, the Secretary of the Treasury and the Civil Service Commission.

Little need be said with regard to the small number of persons that are brought by this rule under special navy yard regulations. These regulations have been approved by all persons familiar with their operation. It was an anomaly that those persons employed in connection with contract work at private establishments were not subject to the general regulations of the service.

The fourth class contains a miscellaneous lot of employees, perhaps fifteen hundred in number, who are not hereafter to be subject to examination or registration. They are posts which will be filled according to the arbitrary will of the appointing officer. On the face of things, these exceptions certainly seem to give the politician a chance to get something for his friends. They seem to constitute a real blow at the merit system. However, I am inclined to think that any one who goes over the list carefully will have great difficulty in finding any place which a politician can use as a reward for political service. I will consider them under four heads: (1) those whose duties are of a confidential nature, (2) those positions in the case of which competitive examinatons have proved impracticable, (3) posts requiring professional training, (4) miscellaneous positions.

Under the first head, there are nearly three hundred and fifty employees, most of them private secretaries for the chiefs of the important bureaus, and confidential or finance clerks for postmasters, army paymasters, Indian agents and pension agents. These men, as a rule, are empowered to take entire charge of affairs during the absence or disability of their chiefs, and most of them have the handling of money for which the chief is responsible. Although these confidential posts are filled by the chiefs of bureaus at their own will and without requirement of examination, I doubt if the practical politician will ever find them

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available for his purposes. Their exception from the competitive list cannot be regarded as a blow at the merit system, and that seems to be the opinion of the Civil Service Commission, for that body, it is said, has approved the exceptions in nearly all cases.

Under the second head, covering those positions which cannot be filled satisfactorily as a result of competitive examinations, we find, first, some fifty positions in the customs and internal revenue services in Alaska. It is claimed, in defence of the change, that under the old rules the Civil Service Commission was never able to furnish an eligible list for the Alaskan service, and that, consequently, the places there have been almost uniformly filled by temporary appointment. Offices in Alaska, it appears, are not objects of eager desire on the part of the citizens of the United States. Considerable embarrassment has resulted to the Treasury Department, during the last few years, because of the superior attractions which the gold fields of the Yukon possess for the temporary office holders at Alaskan ports. Resignations have been frequent, and it has been found very difficult to keep the posts filled with competent men. The new rules do not positively exempt candidates for these places from examinations; they simply give the Secretary of the Treasury permission to waive examination if he so desire. Whatever may be thought of the exception made in the case of Alaskan customs and internal revenue officers, there can be no doubt that the situation demanded some change. If it is hard to get a man to go to Alaska on a permanent appointment, it is unreasonable to increase the difficulty by compelling appointments to be temporary.

It is not easy to suggest any modification of this new rule which would be an improvement. One might insist that the candidates should get some sort of an examination; yet one is obliged to admit that, if the facts are as represented, such a requirement might not work to the advantage of the service. An effective remedy, it seems to me, must be sought, not in a mere modification of the Civil Service rules with regard to Alaskan appointments, but in a substantial change in the relations existing between the Federal Government and distant territories or possessions. This is all part of the great and new problem which the war with Spain has thrust upon the United States. The fact must be recognized that the machinery which has worked well in the Government of nearby territories will not do for Alaska, Ha-

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waii, Porto Rico and the Philippine Islands. In these possessions the Civil Service must be built up on entirely new lines. In my opinion, if we are to get efficient service in our distant possessions, we must not only insist upon a strict observance of the merit system, but we must also pay such salaries as will persuade good men to leave their homes. I do not, therefore, regard the new rule relating to the Alaskan service as a final settlement of the case. It is, perhaps, the best that can be done by executive action. When Congress shall decide upon a form of government and upon a civil service for Porto Rico and the Philippines, then will be the time to demand that the service in Alaska also shall be put upon a sound and permanent basis.

These remarks apply also to exceptions that are made in the Alaskan school service. Some thirty teachers, paid out of the Federal treasury, are employed in giving an elementary education to the natives. It has been found impossible to get candidates for these positions by competitive examinations. The Interior Department, it is claimed, has had difficulty in finding persons who were willing to teach school in Alaska; and, as the pay is small and no allowance is made for travelling expenses, that is not surprising.

There is another group of exceptions in this class which have provoked sharp criticism. They are in the Indian service, where about seventy-five positions have been released from the competitive test on the ground that it was impracticable. Inasmuch as the nation's care of the red man in the past has usually been characterized as a national shame, the report that the Indian Bureau has again been turned over to political spoils seekers has made many good people indignant. There are few people, perhaps, who are willing to do much for poor Lo, but there are plenty who have enough sentimental interest in his welfare to resent any open or flagrant encroachment upon his present rights. Only a very callous and stupid politician would attempt to gain votes at the expense of the Indian, and it is hard to believe that a man of President McKinley's experience and shrewdness, to say nothing of his conscience, would even think of it. On the other hand, if he has ventured to make exceptions in the Indian service solely for the purpose of bettering it, well aware, as he must have been, that his motive would be generally misinterpreted, he must get credit for more than ordinary courage.

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The fact that all the changes in the Indian service were favorably passed on by the Civil Service Commission raises a presumption that they were made for good reasons, and that the competitive test really has been found impracticable. Here is a list of the excepted places: superintendents of irrigation and logging, five special agents, special agents for the allotment of land in severalty, special commissioners for negotiations, engineers to make surveys, examiners of timber lands. If these were permanent positions, it is quite conceivable that competitive examinations might bring forward properly qualified men, although in many of these posts character and tact are much more important than the kind of knowledge which can be graded on a decimal scale. But most of these posts are temporary in character, and this fact is clearly indicated in the new rules, which provide for appointments "as the necessity for their employment may arise." I see no reason, therefore, for doubting the statement that the exceptions in the Indian service were necessary for its improvement.*

The other places in which it is claimed that the competitive test has been found impracticable are of a miscellaneous nature. They include a few places in the Department of the Interior, such as inspectors of coal mines in the Territories, special agents for the protection of public lands, and five special pension examiners. As these places are analogous to those excepted in the Indian service, and the changes are approved by the Civil Service Commission, I pass them without discussion. In the Department of Agriculture, the rule excepts between twenty-five and thirty statistical agents in the different States and Territories, and a few agents and experts hired for specific investigations and not permanently attached to the rolls. It is clear enough that the Department should have liberty in the selection of temporary employees, but it is not clear why regular statistical agents should not be discovered by competitive examinations. But with regard to persons employed as quarantine attendants at the Southern ports exposed to yellow fever, there can be no doubt about the wisdom of the exceptions made by the new rules. The most radical champions of competitive examinations will hardly claim that they furnish immunity from contagious disease. The rec-

*The total Indian service employs about 4,200 persons, half of whom are Indians, who are not subject to the competitive test. Of the 2,000 whites in the service, about 250 are in places not subject to the Civil Service rules, 50 of these being Presidential appointees confirmed by the Senate.

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ords of the Commission show that competition for these places has never been active. Furthermore, in case of an epidemic outbreak, the Department should be free to increase the force at these quarantine stations with the least possible delay.

The only other exceptions to be considered under this head are the positions in the revenue-cutter service, where the persons enlist for the season of navigation only. The purpose of the new rule, it is held, is to place the service on the Great Lakes on the same footing as the ocean service. President Cleveland's order of May 6th, 1896, excluded from classification all persons whose duties were of a *quasi* military or naval character if enlisted for a term of years. This rule was supposed to cover the revenue-cutter service, but it failed to apply to the service on the Great Lakes, for seamen there are enlisted for the season of navigation only. Since 1896, the captain of a revenue-cutter entering port and desiring seamen has been obliged to hold his ship in harbor while certification was made from the Civil Service registers. As the situation was anomalous and unsatisfactory, an amendment of the rules certainly seems to have been called for.

The third group of positions excepted from examination—those which require professional training—includes about 800 physicians and lawyers. Of these, some 600 are pension-examining surgeons, and 175 are physicians employed at first-class post-offices to pass on applications for "sick leave." The lawyers include the Assistant Attorney-General for the Post Office Department, one counsel for the Board of United States General Appraisers, and a score or more of special assistant attorneys. These exceptions hardly deserve discussion. It is evident that, if the Government wants the services of first-class physicians and attorneys, it must look elsewhere than in the ranks of those who are willing to submit to a competitive examination. This fact has been demonstrated by experience, and it is claimed that the Civil Service Commission raised no objection to the amendments affecting this class of employees. It should be noted, however, that medical examiners in the Pension Office are left in the classified service. These, unlike the pension-examining surgeons, have regular employment at fixed salaries.*

*The old rules classified only those pension-examining surgeons whose compensation exceeded $300 a year. The work has always been so judiciously divided around that very few of them have earned this sum. Of the 4,000 pension-examining surgeons on the Government rolls, less than 200 have earned enough to be subject to the Civil Service rules.

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In the fourth group of those exempt from examination, we have the office and field deputies of the United States marshals, Presidential appointees not confirmed by the Senate, the Shipping Commissioners, and the Chief of the Bureau of Statistics.

The case of the deputy marshals is similar to that of the deputy collectors of internal revenue. They were classified by Mr. Cleveland in 1896. At that time, most of the deputies were Democrats, and consequently the Republican marshals who took office in 1897 were under extraordinary pressure to test their power of removal and appointment. Some of them promptly turned out the old deputies and put in new ones of their own selection. Complaints were made to the courts, but the marshals pleaded in defence that the law vested in them the power to appoint or remove deputies, and furthermore that the deputies were not United States officers. The decisions of the courts are not harmonious, but the weight of judicial opinion seems to favor the contention of the marshals. Comptroller Tracewell, of the Treasury Department, has decided that the deputies are not Government officers, that they are not in the classified service, and that their accounts must be paid, even though they are appointed in violation of the Civil Service rules.* Under the circumstances, the President can hardly be blamed for deciding to terminate these contests by definitely excluding the deputy marshals from the operation of the Civil Service rules. Their exclusion can reasonably be defended also on another score. In emergencies, an immediate increase in the force of deputies is often imperative, and it cannot be made unless the marshal has the power of appointment.

It is not likely that President Cleveland intended by his order of May 6th, 1896, to bring Presidential appointments into the classified service; yet the order was found to have that effect. Some forty persons were concerned, and among them were such officials as the Government directors of the Union Pacific Railroad and the Board of Indian Commissioners, men who serve without pay. The rules have quietly been ignored in the cases of these officials, so that President McKinley's order really

*The Secretary of the Civil Service Reform League complains that no steps have been taken to displace Comptroller Tracewell or "set aside his disastrous ruling." This interesting suggestion that a law officer should be fired from the service if he renders an unwelcome decision, shows how hot the debate has grown. It indorses a cause for removal which reformers have heretofore heartily condemned.

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changes the status of only about twenty-seven employees. They include the architect of the Capitol, twelve mineral land commissioners, two mine inspectors, eight special agents to allot land in severalty to the Indians, and two commissioners for certain temporary work among Indians. It is doubtful if these places could be filled suitably by competitive examinations, but if so they ought not to be classed as Presidential appointments.

A shipping commissioner is a sort of police magistrate charged with the settlement of three-cornered contests to which shipping-masters, sailors and boarding-house keepers are parties. There are ten ports which have a shipping commissioner. To appoint them under the old rules, ten different examinations were necessary. This was not believed to be worth while, and the Commissioners are now in the excepted list, although their clerical force is still subject to the rules. It is not clear to me that the situation really called for any change in the status of these officers.

Some time last winter, the newspapers reported that the Treasury Department had decided to hold a competitive examination for the choice of a Chief of the Bureau of Statistics. In academic circles this report was received with some incredulity. It was felt that the right man for such a post could not be the product of a competitive examination. Mr. Austin, the present Chief, was then serving under a temporary appointment. He was selected, I understand, because he had proved that he was able to make figures luminous and interesting to ordinary people as well as to experts. His success in the Bureau proves the wisdom of the choice. It is quite possible that a competitive examination six months ago, in the methodology and other technicalities of statistics, would have placed at the head of the list a man lacking originality and initiative and not half so useful as the present chief. The position has been properly put on the excepted list.

I have aimed in this article to examine the order of May 29th only so far as it has excepted positions in the classified service from competitive examinations, and that task is now done. In my opinion, the facts compel the conclusion that the order was issued for good reasons and with a good motive. If its promulgation was intended to serve any political purpose, it is a most astonishing exhibition of incapacity, not only for the little it does, but for what it omits to do. There are hundreds of desirable places in the service, for the exclusion of which a devotee of the

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spoils system could easily find excuses. There is the Chief of the Bureau of Engraving and Printing, salary $4,500; the Deputy Comptroller of the Currency, salary $2,800; the Deputy Commissioner of Internal Revenue, salary $3,200; the supervising architect of the Treasury and his chief executive officer, salaries $4,500 and $3,000, respectively; the Deputy Assistant Treasurer at the New York Sub-Treasury, salary $4,200; and a great many other high positions paying from $3,600 down to $2,100, for the exception of which good show of reason could be made. The chief clerks and the chiefs of divisions, not one of whom has been touched, might also have been excepted, along with the others I have named, without greatly increasing the storm of protest which the order was certain to create. I have not heard of any spoils politician who, understanding the order of May 29th, is exultant over it. It is a failure as a sop to politicians; if that was its purpose, the President has merely proved that he ought to take a kindergarten course in the school of New York politics.

It is no part of my purpose to discuss the minor modifications of these rules, or the criticisms which they have provoked. The Secretary of the Treasury—whose private secretary, by the way, is a Democrat—has clearly shown that the amendments to the rules are not capable of the evil construction placed upon them by the critics. They do not, as was first charged, let down the bars to thousands of employees temporarily appointed during the war with Spain, nor do they in any way provide for rotation in office. On the contrary, they increase the security of every employee in his office, and extend the protection of the rules even to those who have been excluded from classification.

If the heads of executive departments are besieged by office seekers, they may ascribe the invasion, not to the order of May 29th, but to the false signals which have been hoisted all over the country by the friends of reform. I do not believe that there is any new game in Washington for the spoilsman, or that Civil Service reform is in peril.

JOSEPH FRENCH JOHNSON.

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FOOD WHICH FAILS TO FEED.

BY LOUIS WINDMÜLLER.

THE worth of a man depends largely on the food he digests. In the opinion of experts, a majority of the human race suffer from disease engendered by errors in diet; yet few are aware that they commit any errors, and still fewer take pains to avoid them. This is specially true of our own country. The ambitious American is apt to consider the time spent on the care of his body as wasted; to him fortune, power or fame is of greater importance than health. Although it is well known that those who wish to enjoy a long and happy life must eat little at a time and eat that with deliberate satisfaction, he scarcely permits all his daily meals to absorb as much of his day as Mr. Gladstone, for instance—who thoroughly masticated every morsel of food—required for one meal.

The breakfast of our suburban resident is taken in early solitude; he washes down the substantial portions of the meal with draughts of coffee, and hurries away to enter upon his toil. At noon he approaches a "quick lunch" counter, seizes a sandwich, and, standing in the midst of a surging crowd, he alternately swallows mouthfuls of ham and of cold water. Suddenly his partner appears, whispers portentous news about a common business venture, when, hastily draining his glass of its icy contents, he leaves the remnant of food and hastens away.

Some persons fail to take, when needed, even the most scanty refreshment. The manager of a certain publishing house, a man of unbounded energy and robust constitution, was ruined by such neglect. If his time for luncheon came while there was business to be attended to, he delayed or entirely omitted it; in consequence his health gave way, and, with it, a prosperous firm of

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world-wide reputation failed. Merchants on the continent of Europe are not apt to fall into such errors. They close their offices, to enjoy a substantial meal, between twelve and two, with the punctuality with which at maturity they meet their obligations. We might follow their example with advantage. Those who are fortunate enough to have access to one of the convenient retreats from our crowded thoroughfares called club-rooms, should, when the hour strikes, proceed thither, to be served with excellent food by trained waiters, while comfortably seated with friends around hospitable boards. Sociability, a chief mark of distinction between man and other animals, promotes digestion. "A fig for your bill of fare; show me the bill of your company," said Dean Swift. A repast in such circumstances not only strengthens the body but invigorates the mind, and enables us to resume our task with renewed energy.

Happiness and health depend on our ability to forget, as soon as necessity for the immediate consideration of it has passed, the trouble which has absorbed us. In the family circle, at meal-times especially, temper should be subdued and unpleasant conversation avoided. A woman of tact refrains from increasing the burden of her husband by a tale of her woes, even if he should be weak enough to brood over his business complications. Dining once with a manufacturer of haircloth, I asked his wife for an explanation of his painful silence, which contrasted strangely with the exuberant spirits of the children. "He is counting the hair that will make your cloth," she whispered in extenuation. When a grave crisis occurs, men of heavy responsibilities are liable to become victims of their anxiety. One of our largest and best-managed banks lost in this way several of its ablest officers, and a prominent railroad three of its presidents within ten years. Considering that, under the circumstances, their constant personal attention was a paramount duty, they died because they could not tear themselves away from the responsibility they had assumed long enough to take the relaxation which their health required.

This engrossment of mind is by no means confined to men engaged in commercial pursuits; Keppler, *Puck's* genial artist, met his untimely death through a disturbance of digestion caused by worry over the Centennial Exhibition. When we see a far-away look in the eye of a journalist while he takes his food mechanically, he composes an editorial; the politician delivers a

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silent address, the divine a sermon, during their perfunctory attendance at family dinner. It may not be a symptom of disease to think while eating, but serious occupation of the mind, when one is so engaged, must eventually lead to disease. Ambitious men often spend their vitality before they can reap the fruit of their labor, and, when they have become successful, wealth fails to compensate for exhausted health.

There is no less danger in eating too much. The capacity of our stomach is limited, and it produces only gastric juice enough to digest what we require for the sustenance of our vital powers. The surplus ferments, and, when too often indulged in, excess leads to disease or obesity. I derive more pleasure, in satisfying the appetite which nature has provided, from leisurely munching a piece of bread made in my kitchen, than from the delicious dessert which follows a sumptuous dinner. The French proverb, *"L'appétit vient en mangeant,"* usually translated "the more we have the more we want," originally meant to imply that the titillation of the palate created by the piquant morsel is a natural craving; artificial means to stimulate the desire for food are pernicious. Persons who cannot resist the temptation to partake of the savory dishes which are within reach of their senses, might learn a salutary lesson from the Shakers, who place their simple ration before them and leave the table when they have disposed of it.

The practice in our best hotels in the cities and at the summer resorts of furnishing all a man wants to eat for a fixed price, offers temptations to gormandize. Beginning his breakfast with fruit and porridge, the greedy boarder orders fish, steak, chops, eggs and rolls, with tea or coffee. A customary introduction to his luncheon consists of soup and fish, followed by roasts and game; the waiter, anxious for fees, supplements this with a formidable array of other dishes, containing a surfeit of vegetables and "entrées." In solemn silence, as if undergoing penance, our diner resolutely attacks one after another; not uncommonly washing down the most discordant *"menu"* with copious draughts of water, cooled to a temperature fifty-five degrees below that of his stomach. One such meal is heavy enough to be of itself a burden; still it is sometimes repeated in the evening at dinner and followed at night by a "light" supper, a second and a third meal being taken before the first could digest.

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One of the Roman Emperors scarcely ever left the table before he had thoroughly crammed himself and drunk to intoxication, when he would fall asleep. After a short lapse of time, a slave put a feather down his throat and made his stomach disgorge its contents. When our American glutton finds himself in distress through overeating, he resorts to drugs, the continued use of which weakens his organs until they lose their vitality. The European plan of serving at fixed prices portions of food which must be paid for as ordered, saves from overindulgence at least those persons who are too economical to pay for what they do not need. Such a method would be advantageous to the hotel-keeper who, under the present system, is compelled to serve not alone what his guests consume, but also what they leave. I know the manager of a city hotel who goes himself into the kitchen, carefully inspects what is returned from the dining-room, and sells decent-looking slices to keepers of cheap restaurants, where these leavings form "*pièces de résistance*" for guileless patrons.

Much may thus be saved in large towns, but the wholesome food which is daily thrown to the dogs by hotel keepers of summer resorts might feed an army. Change would involve more careful supervision of the kitchen; another great obstacle is the importunacy of guests who give a waiter hardly time to go for what they want as far as the end of the dining-room. If the custom of serving a "*table d'hôte*" as it prevails on the continent of Europe were adopted, we could, while partaking of good cheer, enjoy the conversation of neighbors. As a steaming dish is brought from the kitchen and passes along the table from one guest to another, many opportunities for intercourse offer themselves, and the pleasures of digestion are promoted by the spice of conviviality. Such a meal, consisting of soup, fish, entrées, roast, a vegetable, cheese and wine, appears to be, at the average price of five francs, cheap enough to the American traveller, but it takes more time than he has to spare. When our public dinners are served in this way, those who go chiefly to partake of the ensuing feast of reason often lose patience before the speeches begin, and those who, under the guise of guests, are expected to furnish that part of the entertainment, fail to enjoy their dinner. As long as speeches prey on their minds, and while they fret lest a predecessor may steal a march on their ideas, they cannot be at ease. Delivered of their pent-up eloquence, they may at a late

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hour moisten the parched tongue with a glass of wine or soothe the heated brain with a cigar; but the dinner is over, and when they go home they are more often hungry than satisfied. In France, after the fish, addresses are sandwiched between courses; waiters are signalled to bring the on-coming course as each brief discourse is finished. It is difficult to introduce this practice where hurried caterers drive uneasy guests. But, according to the custom of the Japanese, we could listen to our orators before the banquet begins, and then offer them our undivided hospitality.

It is astonishing what simple food, and how little of it, may satisfy the human body. Socrates said, "The less a man needs, the nearer he is to God, who needs nothing." I was still a student when, overtaken by the pangs of hunger, during a vacation tramp, I knocked at the door of a peasant's cottage. My nostrils were greeted by a delicious odor which rose from a huge bowl of potato soup. Cordially invited to join the family who surrounded it, I helped myself to a share of the contents by dipping, like the rest, a long ladle, of which I had exclusive use, into the depth of the dish, until it was empty. The bright eyes and happy faces of the girls, my youthful imagination and keen appetite, gave to that simple meal a delight which, after fifty years, continues to linger in my memory. Would that the poor of our cities could enjoy such healthful fare! A charitable association, of which I used to be a member, furnished to every comer, for five cents, a quart of meat stew, well cooked, and composed of beef or mutton, onions and turnips, flavored with fragrant herbs; a pint of coffee, with milk and sugar, and four ounces of white bread. The raw material of which this wholesome dinner was composed cost three cents; five cents a pound for the meat, three cents for the bread and one cent for the vegetables. Our poor must pay these prices twice and thrice over for food which is the worse for keeping, because every one of the numerous shopkeepers of whom they are compelled to purchase sells so little that he cannot sell it while it is fresh, nor, since he must pay rent, without large profit. In Rivington Street, New York, a girl recently died from the effect of ptomaines contained in her small steak. It is a grievous wrong that our laborer should be compelled to support, besides his own family, the family of a butcher who will sell such meat for nourishment. New York spent millions for a road to speed horses of wealthy sportsmen;

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one million would suffice to erect free markets quite near habitations of mechanics. If these were placed without charge at the disposal of reliable dealers, on condition that they would sell good food at a moderate advance on cost, the poor could obtain it at about the prices I have named without being indebted to charity. Owners of a "department store" recently set aside a vast floor of their building for a popular market, where they sell good food below the average prices. The location of the store is not convenient to many, but its market being well patronized and remunerative, the experiment demonstrates the practicability of my suggestion. It may close the shops of dealers who now sell dyspeptic food at high prices; but for every one whom such competition might compel to seek a better vocation, the families of a hundred laborers would be benefited. Instead of getting corrupt meat and stale vegetables, they could exchange their hard earnings for wholesome viands.

The best food, however, will not serve for healthful nutrition if it is not properly prepared, and it is, therefore, of great importance that a knowledge of the art of cooking should be more widely disseminated. Prejudice against manual labor, combined with a prevailing ignorance of the culinary art, drives too many of our families into boarding-houses. In Europe, women are apprenticed or go into service; they have learned how to make, from scanty material, a palatable meal before they assume the responsibility of matrimony. Steps have been taken in many States to teach them by the establishment of cooking schools, but these fail to give instruction where it is most needed. Girls should in all our public schools be taught how to cook a dinner, an accomplishment which, to most of them, is of no smaller importance than the ability to read and write; it always will command a husband or remunerative employment.

To keep intact the liquid substance which forms seventy-five per cent. of our living frame, we need five pints of fluid a day, half of which is contained in the ordinary solid food. The other half we must drink, to promote digestion; without moisture the face wrinkles and the complexion turns sallow, just like the plant that suffers for want of rain. Advice not to drink while eating is chiefly given to persons who cannot refrain from using liquid to expedite the passage of the solids they will not take the trouble to masticate.

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The best beverage is water, fresh from a spring or well not contaminated by sewage. Natural mineral water should be substituted when the common water obtainable is of doubtful purity, or the latter should be distilled and then cooled by laying it on ice; when drunk too cold, it chills or retards digestion; frozen water, the origin of which is unknown, may contain microbes. The indiscriminate and immoderate use of ice-water is a reprehensible American habit. When I turn to my neighbor at the hotel table, a servant hastens to replenish my goblet with the pieces of ice which I had just succeeded in removing; in my room, when I ring the bell, a waiter silently pushes a pitcher of ice-water through the half opened door, without asking for my wants.

After water, I consider these beverages, when taken in moderation, as the most wholesome for adults: Light, pure, natural wine, containing not over twelve per cent. of alcohol; seasoned spirits, distilled from cereals or grapes, and diluted with water; coffee from good berries, freshly roasted and freshly ground; pure beer made of barley, hops and water, containing not over seven per cent. of alcohol.

In regard to alcohol, there can be only the one opinion, that persons should abstain from it who are too weak to restrain their appetite. Two-thirds of our physicians have testified that a temperate use of spirits is more apt to improve than to injure health. Alcohol stimulates secretions required for digestion, supplies nourishment, and, at a later period, it often sustains the strength of the man who has led a rational life.* Dr. Liebig, the German chemist, says that "no product can surpass wine as a restorative and as a means to correct a misproportion of nutrition." Dr. Berard, a noted French surgeon, finds that alcohol is the most effective stimulant of the gastric juice. Dr. William Jenner, a famous English physician, who died at the age of eighty-three, took brandy when he suffered from indigestion. Pope Leo, who avers that wine cheers the heart, enjoys his Chianti at the age of ninety.

The influence of liquor largely depends on how we take it; nectar, when, encircled by congenial friends, we serenely and slowly imbibe it, becomes poison when in haste we recklessly toss off one glass after another. My friend David, for many years

* Professor Atwater of Wesleyan University has, by experiments on a man in the respiration calorimeter, recently demonstrated the nourishing qualities of alcohol.

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executive officer of a large corporation, would receive a visit from one or the other of his numerous out-of-town agents, and invite him to the hospitality of a neighboring café. After a hurried indulgence in liquor, they would return to their business; but, before David had become comfortably settled, a second agent would appear and he would be treated like his predecessor. This practice continued until poor David became a tippler. He lost the confidence of his directors and the proud position he occupied. If, in the first place, he had been compelled to sit down with his guest in the café, they might have enjoyed one drink at their ease, and that would have absorbed so much valuable time that he would have been too conscientious to spend more on a second one. Saloon-keepers should be compelled to furnish chairs and tables, instead of the twelve beds which an absurd provision in the New York law prescribes in certain cases. In Europe, American bar-rooms are unknown. The English sit with their customary tranquillity while served by a pretty barmaid; the French *"buvette,"* a mere closet, is used chiefly by cab drivers; Germans, who *per capita* drink more and become intoxicated less than others, speak with contempt of the glass which occasionally they imbibe while standing, as a *"stehseidel."* Bars should be abolished or restricted to the sale for families; liquors should not be served in licensed premises except to persons who are seated.

David found a worthy successor in friend Jonathan, a man of steady habits but unbridled ambition. He aspired to become President of the Company, when the gentleman who nominally bore the title suddenly died. Jonathan succeeded to the post, but anxiety impeded his digestion so that he soon had to follow his predecessor. David no longer perturbed by the pressure of business continues to enjoy his customary toddy.

A clergyman of my acquaintance, who, by the querulous, fault-finding petulance of fanatic temperance apostles amongst his fashionable congregation, often was harassed, says that we have a dozen gluttons to every drunkard, and that every glutton becomes a crank. Waggishly he changed into "O, Lord, reliver us," the prayer for deliverance from evil.

The experience of temperance societies who advocate total abstinence shows that, while "Maine" laws may "prohibit," they seldom hinder the use of liquor. Legislation never can eradicate the natural craving for stimulants; children of Adam and Eve

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take forbidden fruit in preference to other since their progenitors were tempted to taste it. Prohibition States consume larger quantities of vile concoctions than those which allow perfect freedom. Four persons out of five amongst the ignorant poor break the temperance pledge after they are persuaded to take it. I had a coachman who broke it habitually, so that I once insisted on being present when, to retain his position, he again took the customary vows. Shocked by the perfunctory ceremony, I induced the priest periodically to visit my servant, whom his kind persuasion eventually succeeded in saving. Fanatical coercion is less apt to make converts than friendly counsel and worthy example.

As much, if not more, harm is done by adulteration of the liquor sold than by over-indulgence. The wealthy, who, regardless of price, buy from reliable purveyors the best, may be protected; but who is to guard the indigent against imposition, when he wants to drown his care in the foam of a mug? Smell and taste deceive the unhappy victim. Even if he had facilities for analyzing his drink, he might still remain in ignorance of its composition, since, in imitation of wholesome liquor, concoctions have been made with a skill which baffles the expert chemist. In Munich, I can enjoy without evil consequence a quart of "Hofbräu" beer; when taken here, a smaller measure may produce heartburn and headache.

In Bavaria, Government Inspectors analyze the brew when and where it is made. If the liquor is impure, or has not had time properly to ripen, so that it is liable to ferment in the stomach, it is emptied into the street, and the producer is fined and imprisoned. In New York City alone, three chemical laboratories manufacture concoctions for the adulteration and coloring of beer, whose sales annually aggregate several hundred thousand dollars.

In England, analysts of the Excise are compelled to search for suspicious beverage. A vender in whose possession they find adulterated liquor is fined from $100 to $500, and his license is withdrawn. Of a number of brewers tried for this offence, about ten every year have been found guilty.

On the continent of Europe, wine and beer are prepared for export by "fortification," as an admixture of amylic alcohol, distilled from potato spirit, is called; it makes the beverage more durable, but less wholesome. Insalubrious dyes are added, and salicylic acid, a most injurious ingredient, is used to arrest fer-

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mentation. This permits manufacturers to market their product more quickly than they could if they waited for the natural process; the liquor which contains this acid, when too much of it is taken, becomes deleterious to the kidneys.

Dr. E. H. Bartley, Chief Chemist of the Brooklyn Board of Health, claims that the smallest quantity which can make salicylic effective for this purpose is ten grains to the gallon, and that three grains have been found in one pint of wine. Dr. Cyrus Edson confirms the statement. Of American beer which was made in different parts of the country and tested by our Department of Agriculture, according to their report of 1887, six bottles out of twenty-six contained salicylic acid, and one out of two foreign bottles, which was made in Bremen and labelled "Kaiser." The same report contains the result of the analysis of seventy samples of American wine, eighteen of which contained salicylic acid, and thirteen sulphurous acid. In the composition of fifty other samples of sweetened California wine, hardly a trace was found of grape juice.

Laws enacted by various States to prevent adulteration are seldom enforced, because they lead to corruption and to discrimination in favor of manufacturers in other States, where similar laws are evaded or do not exist.

Our internal revenue law which requires liquors to be stamped should, when amended, provide that Government Inspectors be required to test the liquor and stamp only that which they find to be pure; and that the impure should be destroyed under their supervision. Consumers would cheerfully pay a tax which would effectually protect them against adulteration. Respectable dealers and honest brewers would welcome a control which would endorse the purity of their beverages. In Germany and France, the use of unwholesome ingredients in anything that is used there is prohibited.

A considerable portion of the milk sold in large cities has first been skimmed, and then diluted with water, a process by which it becomes less nourishing and, when the water is impure, dangerous to health. The greedy farmers who thus manipulate their product under cover of the night are apt to use water from the most convenient well, which often is located near the cess-pool. When dealers receive the cans at the railroad station, they are in too great a hurry to analyze a fluid which has the customary appearance; the

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quality can be ascertained only when a lactometer is carefully used. Some years ago, a number of diseased tailless cows, fed in dirty stables with rotten swill, were accidentally discovered; Dr. Doremus studied the cases, and, for a while, milk was analyzed; as a rule, however, municipal Boards of Health in large cities cannot or will not examine it. Helpless infants must continue to be fed on poor milk, until our dairy system is better controlled. In some thirty schools in various parts of the country, farmers may learn that cows must have pure air, a sufficiency of clean water and wholesome food in a good pasture. If the privilege of selling milk were confined to persons who have taken a course of such lessons, and who have passed an examination under the auspices of the Department of Agriculture, and if their milk were sold in original cans only, we might secure decent food for the children. The seller of impure milk is fined and imprisoned in several parts of Europe.

Glucose made from potato starch, and colored with aniline, is substituted for fruit juices to flavor soda, the popular summer drink. A similar indigestible compound is used to make candy, the enormous consumption of which alone is sufficient to turn us into a nation of hypochondriacs. Our palates begin in early childhood to be pampered with nasty sweets, and as we grow up we do not always discard the habit. My friend Nascher, who had acquired this taste in his New England home, always kept a huge supply of candies on his sideboard, which he generously offered to his visitors. Efforts to dissuade him from immoderate use of sweetmeats were of no avail, and even led to estrangement. One day, when he fell ill, physicians had to pump the undigested stuff from his inflated stomach. When again we met, the genial smile had died from his face; packages of Boiler's Best no longer distended his pockets, and the clothes hung slovenly around his shrunken body. No medical aid could prevent his untimely death. When twenty-five samples of candy from different shops were tested by the Agricultural Bureau in 1891, not one of them was made from cane sugar, and the bright colors were aniline dyes.

Turning from sweet to sour, we find that verdigris colors our pickles; that oil of vitriol is often substituted for acetic acid to acidify vinegar; in short, that frauds by which unscrupulous persons try to enrich themselves at the expense of the ignorant poor are too numerous to mention here. Experts recently have

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testified before the Pure Food Investigating Committee of the United States Senate that a large portion of all articles of food and drink used in our country is adulterated.

They include butter and cheese, coffee and spices, molasses and honey. Fish and fowl, meat and vegetables are more wholesome fresh than preserved. Boracic acid generally used for preservation retards digestion, and prevents it when too much comes into a weak stomach. One of the worst impositions is the admixture of alum in the manufacture of yeast cakes and baking powders, because almost every cook uses them, quickly to raise the leaven of bread. As this is often not thoroughly masticated when it passes from the mouth into the alimentary canal, it becomes with residues of the alum a doughy ball, to digest which the poor stomach must wrestle for many hours.

The druggist on the continent of Europe is required to make an independent analysis of the medicine he disposes of. To enforce this rule, where patent medicines too often take the place of prescriptions, may be difficult; but means should be found to afford our people better protection against adulterations. Teas colored by lime and indigo were largely imported, until a law was enacted that, before being landed, all teas must be tested by officials of the Custom House and the impure teas returned. This seems to be the only food, if food it can be called, the purity of which is controlled by the Federal Government. Our system of internal revenue stamps could be extended, so that every article of food and medicine which is sold in sealed packages should be stamped, so that the United States stamp would indicate that it has been officially tested.

To require from manufacturers labels with an analysis of the ingredients of their products, as has been suggested, would be impracticable; they should not be compelled to divulge their trade secrets. Laws against adulteration which exist in one State can seldom be enforced against citizens of another State. Government inspection and revenue stamps might, however, become a guarantee of the purity of our products the world over.

On account of its more speedy assimilation, a preponderance of animal food in our diet is desirable. We too often swallow, in our haste, indigestible parts, like bones and sinews of animals, the pits and skins of vegetables, turning our stomachs into vessels which must carry useless ballast for an indefinite period. When,

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in consequence, our delicate alimentary canals become clogged, attempts to dispose of the burden cause insomnia. Often falsely attributed to other causes, illness grows upon us insidiously, and gradually it turns its victims into dyspeptic misanthropes. The sweetest songs grate on their ears, the fragrance of flowers nauseates their nostrils, the sun to their eyes seems like a fiery ball, the moon like a green cheese. Their organs become weak, so that death may be caused by the imposition of the slightest additional task.

Active, outdoor exercise, like air and sunshine, is one of the necessities of life. Persons with sedentary occupations who know how essential it is, usually find means to take it. My German teacher sat reading by his open window, and took a sitting promenade by swaying his legs to and fro, giving them an occasional straight kick for the sake of variety. Travelling by rail, I walk up and down the platform where stoppages permit, or along the aisle if too long caged in the car. When duties prevented his daily constitutional, Bismarck danced with Princesses at Court balls, and Emperor William paced for hours up and down his room when storm prevented him from sallying forth.

As a machine will rust when it ceases to move, so will a human body which gets no exercise decay. The popularity of out-door sport, which has been developed so strongly in the latter part of the century, points toward a decided improvement of our race. The time may not be distant when it will be considered a misdemeanor to be ill, and when the perfunctory question, "How are you?" will be deemed an insult, because it may imply that we have committed a crime in neglecting ourselves. We shall then be able to relish our food without appetizers, and to sleep without nightmares; we shall cease to forbode evil which never comes and to dwell on errors of the past which can no longer be retrieved. Following the sound advice which Goethe gave, we will let no day pass without reciting a poem or singing a song; and we may become able to enjoy while we live all the advantages of a sound mind in a sound body, "*mens sana in corpore sano.*"

LOUIS WINDMÜLLER.

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THE STORY OF A HELPFUL QUEEN.

BY CARMEN SYLVA (THE QUEEN OF ROUMANIA).

ONCE upon a time there lived a good Queen. She would fain have assuaged all the suffering she saw on earth. But the more good she did, the more distress seemed to increase. Her means were inadequate to help the poor, her words proved unequal to the task of freeing those in sorrow from their grief, and her hands were unable to bring healing to the sick. Then the thought occurred to her that it must be impossible that God should have intended the world to be so full of misery; she felt that mankind was destined to be happy, if only it knew how.

One day she entered a church and prayed to God with an intensity the full strength of which she was unable to realize at the time. She prayed, as many other foolish mortals pray, who do not know what it would mean to them if their prayers were granted. She prayed: "Oh, Lord! Let me be able to bring happiness to those that suffer, even if I must take their burden upon myself." She left the church with an anxious heart, wondering whether God had heard her prayer. For sometimes God does not seem to hear us when we pray. But on the very same day it was made clear to her that her prayer had been heard.

She met a boy being wheeled in his sick chair, who had never been able to walk a step in his life. She had known him for long, and he loved the good Queen with all the strength of his soul. As was her habit, she went up to him, took his thin hand in hers, and spoke to him in her melodious voice of his early recovery. The boy's eyes seemed to grow larger as she spoke. She felt as if his glance drew all the strength from within her; she was suddenly overtaken by a sense of fatigue such as she had never known before. And, all at once, the boy rose up straight

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from his couch, and said, as if in a dream: "I think I can walk." Then he got on his feet and stepped out as though he had never been lame in his life. The Queen smiled sadly at the sight of his gladness. She went home and lay many weeks in bed suffering from lameness. Her limbs were as though they had perished. Still, she declined the help of the doctor and said that in due time God would take her suffering from her. And so it was. Henceforth she suffered from one illness after the other; she became blind, deaf, mute, and fell into high fever; but only to emerge younger and more beautiful—glorified, as it were, by every trial through which she passed. Nobody ever heard her utter a word of complaint. Her miraculous powers for healing the sick became known far and wide, although she never spoke of them, and people thronged around her and besought her to alleviate their sufferings, without having an idea of the sacrifice it involved for her. It was only rumored that the Queen exposed herself to all kinds of infection and would take no precautions against them, particularly where children were concerned. Her poverty soon became equal to her other trials.

She was ingenious in procuring work for others, but she herself had long since had nothing left to give. She was forced to begrudge herself the smallest luxury, for she was bereft of every means for procuring it. And although her devoted husband often assisted her from his own, yet she fell at last into the same plight as Saint Elizabeth of old—she had scarcely a gown left to cover her. And still her name was blessed a thousand times. People came to her from far and near. They tried to grasp her hand, to catch a glance from her eyes, the splendid radiance of which soothed all those who looked into them. She spread an atmosphere of peace and happiness around her, and even those gained joyful contentment who had been most ungodly. Nobody could resist the placid influence which emanated from her person.

But what was harder to bear than all were the dark hours of misconception, when she had been the means of fostering peace and was only requited by the slander of evil tongues in her own home. This almost made her forget that it was all part and parcel of the blessings which her miraculous gift had vouchsafed her.

She wept in silence. But soon the clouds lifted again, and she realized that she was ordained to take the spiritual sufferings of others upon herself. From that moment her patience became

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inexhaustible. And people forgot that they had ill-treated her, and fancied that they had always venerated her and never misunderstood or maligned her. She smiled sadly as she thought of all this in her solitude. One glance from her had enabled them to forget the past.

It was a remarkable experience to her to have to suffer the pangs of repentance of a guilty conscience, as if she herself had committed some great crime. This was the result of bringing back to the right road one who had lain and fallen under great temptation. This was, indeed, hard to bear; for she knew herself to be free from guilt or blame, and yet her poor heart beat day and night in mortal anguish. At times she was conscious that this could only be a transitory state of mind of hers, like all the others she had passed through; but her sufferings were great indeed.

One day she was visited by a poor woman. "Oh, dear, gracious Queen," she cried, "my only son is dying! And I know that you possess miraculous herbs which can effect a cure in cases where no mortal can afford help!"

Without hesitation, the Queen hurried to the bedside of the gasping youth. He opened his eyes, which were already nearly closed, and looked at the Queen; and that one glance rekindled the dying flame of life. Breath returned to him; the pallid, cold lips grew red and warm, and the grateful mother sank down before the Queen, embracing her feet, and then fondling her son who was saved.

On her return home the Queen did not feel so weary as usual, and yet she fully expected to be struck down by a severe illness, if not indeed by death. But what was her agony when, the very next day, her only child fell seriously ill and appeared to be hurrying towards certain death. "O Lord, O Lord," she cried, "do not ask this sacrifice of me, for it is beyond my strength." But her supplications were in vain. In vain was her experienced nursing. The glance of her eyes had lost its power here. Her child did not look up again, and only murmured, at times, of beautiful angels and flowers, until at last it lay pale and cold in her arms—and she a broken woman, bereft of tears, without strength to utter a moan, utterly consumed with grief. Henceforth her miraculous power seemed to have deserted her.

People said she had lost faith in her mysterious herbs. Dark

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days indeed were in store for the poor Queen. She cursed herself and her prayers. She said to herself that it was her fault that the husband she adored was now as unhappy as she was herself. The world seemed to her to be dark indeed. She only saw night around her; no sunrise, no lovely trees, and no heavenly justice; naught of all that which in other days had gladdened her heart. She who had never complained before, so long as she thought she could relieve others from their suffering, now thought heaven to be cruel, and she no longer possessed the strength to rejoice with the mother whose child she had saved from impending death. For the first time for many a day, during which she had been ceaselessly racked by anguish and doubt, she fell asleep.

And it seemed to her that the door opened, and her child came towards her, happy and radiant. He sat down by her bedside and took her hand, and the dull heaviness of pain was lifted from her heart. He breathed with a breath as of violets, and joy possessed her. He spoke to her with the voice of a clear and resonant bell.

"Mother! Weep not! You have given me a greater happiness than is known on Earth—even through the sublimity of Love; for you have opened up the Heavens to me. And I have been permitted to return there without pain and sorrow—thanks to your self-sacrifice. Mother, weep not! I am ever near you. You were guilty of a pious error when you undertook to banish all suffering from the world; and this error you had to atone for in sorrow and ashes. For the world is exactly as God ordains that it should be—a mine, a furnace, a crucible—a brief passage from one existence unto another, which is higher or meaner in accordance with the life we have practised on earth. Be patient, mother—your hour of release is near, and I am always by your side with all my fervor and strength. You can still console others, because you believe in the world to come—yes, because you know for certain that it awaits us all. There is no such thing as Death! There is only a Re-birth. And if, O Mother! you only knew how beautiful it is, you would await it radiant with joy and never sigh again! It is necessary that Poverty, Sickness, Injustice and War should exist; for these are means of purification, of mutual help and mercy. Therefore are all those blessed who help them that suffer with all their strength, with all self-sacrifice staking all they have to give. But they cannot make this world a Paradise; that is not permitted to them. For the World is indeed a

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Laboratory which, according to worldly conceits, we call Hell or Purgatory."

Here the Queen awoke, and from that hour peace entered into her soul. She was able to do good, to console and to give pleasure to others, but no longer to cure them! And she no longer asked for power to do these things, for she was quiet and content, and Peace reigned around her.

CARMEN SYLVA.

Sinaja October 30th, 1898.

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THE IMPERIAL GALLERY OF THE HERMITAGE—II.

BY CLAUDE PHILLIPS.

We have seen that the Italian pictures at the Hermitage, although they are of the highest interest to the student of art, as well as to that larger public which naturally cares less for problems and attributions than for the breadth of style, the dignity and the suave beauty of the art of painting at its zenith, are not in themselves sufficient to place the Imperial collection of St. Petersburg on a level with the noblest collections of the world, the Uffizi and Pitti, the Louvre, the Prado, the Dresden and Berlin Galleries, and the National Gallery. The Hermitage owes its greatest celebrity to its completeness in other departments—to its unequalled series of Rembrandts, to its great collection of Rubenses and Vandycks, to its examples of Netherlandish painting generally, to its interesting special groups of works illustrating French art of the seventeenth and eighteenth centuries, Spanish art of the seventeenth, and English art of the eighteenth.

Two works attributable to the brush of Jan Van Eyck will first engage our attention. The "Annunciation" is an unlovely yet in detail wonderfully interesting piece, produced a year or two earlier than the altar-piece of the Bruges Gallery with the Madonna and Child, St. Donatian, St. George, and Canon George de Pala. We may not on the present occasion attempt any analysis of its architectural or ornamental features, but must pass on to consider two wings of a triptych, "The Crucifixion" and "The Last Judgment," which come as an absolute surprise to those who, knowing the Van Eycks in their moods of hieratic composure only, have not unnaturally brought themselves to look with doubt upon any panel bearing their name which expresses violent action or intensity of sacred passion. These wings belonged, with the central panel—an "Adoration of the Magi," which was unfortun-

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ately stolen before the pictures entered the Hermitage—to the Grand Chamberlain, D. P. Tatischeff, and were by him bequeathed to the Czar, Nicholas I. On the authority of Dr. Waagen they were stripped of the name of Van Eyck and put down to his best-known pupil, Petrus Cristus. It is only within the last few years that, on the high authority of Herr Carl Justi, they have been restored to the greatest of the Netherlandish masters. They must, however, for the present be put in a class by themselves, or rather with a restricted group of similar works, among which are to be numbered a "Crucifixion," recently purchased from the Berlin Museum, the "Holy Women at the Sepulchre" in the collection of Sir Francis Cook at Richmond, the "St. Francis of Assisi" in the Royal Gallery of Turin, the very similar but smaller picture in the collection of Lord Heytesbury in England, and the "Triumph of the Church Over the Synagogue," of which an old copy is at the Prado, but the original is nowhere to be traced. Many students of the school and the master still hesitate to recognize his own conception and his own hand in these subjects, which reveal a deeper pathos than the calm Jan Van Eyck had hitherto seemed to have at command, and with it a mode of handling not quite so minute and searching in every particular. In the opinion of the writer the St. Petersburg "Crucifixion" and "Last Judgment" are not only beyond reasonable doubt Jan Van Eyck's own, but they must as creations of absolute originality be counted among the most wonderful things of the Netherlandish school at this period. Hardly again has the Crucifixion been imagined with this rugged force and grandeur, with this power of intense individualization, which yet robs the world-tragedy of none of its significance. Compared with this conception of the painter whom we hold to be Jan Van Eyck, that of Roger Van Weyden himself, as we see it not only in his own works, but in those of a host of Netherlandish and Germanic followers, appears, for all its passion and tenderness, just a little conventional. A comparison of the St. Michael in the St. Petersburg "Last Judgment" with the figure of the archangel in the left wing of the wonderful little triptych by Jan Van Eyck in the Dresden Gallery shows identity of handling and treatment. In the "Last Judgment" St. Michael stands erect on the tremendous spectre of Death ("*Umbra Mortis*") overshadowing the abyss, with its huge bat's wings, and thence pronounces the dread words, "*Ite*

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vos maledicti in ignem æternum." This same motive is repeated in the much larger "Last Judgment" by Petrus Cristus, which is No. 529 B in the Berlin Gallery—but repeated stupidly and mechanically, with almost total loss of its grandeur. Here we have evidence —if such were wanted—that not the heavy and unimaginative, if painstaking, Petrus Cristus of the Berlin triptych, but a greater painter and a greater genius conceived and fashioned the little picture of the Hermitage.

Exceptionally important is the large "Coronation of the Virgin" (more properly "Madonna in Glory") of Quentin Matsys, with the figures, beneath the Madonna and her attendant angels, of King David and the Emperor Augustus, each with his proper sibyl, and in the centre the Sibylla Persica in the rich costume of a patrician dame of Flanders. This work forms a connecting link between the thoroughly authenticated and unquestionably characteristic paintings of Quentin Matsys and that group of panels, hitherto assigned to Patinir, which with certain differences, of standpoint rather than of technique, of a kind not easy to deal with, show such marked points of resemblance that many modern critics of authority strongly incline to class them as the handiwork of Matsys in his earlier time. To this group belong among other things a "Crucifixion" in the Liechtenstein Gallery at Vienna, of which there is an ancient copy, rather larger than the original, in the Alte Pinakothek of Munich; a smaller " Crucifixion" at the National Gallery; a "St. Sebastian" in the Germanic Museum of Nuremberg; a "Trinity," a "Madonna in Glory," and a "St. Roch" in the Alte Pinakothek; and a "Temptation of St. Anthony" of astonishing dramatic power in the Prado Museum of Madrid. Yet another important piece of the Flemish school is the "Descent from the Cross" by Barend Van Orley, which with a dozen other pictures, came to Russia from the collection of William II. of the Netherlands. This remarkable specimen of an accomplished executant who is never wholly sympathetic, and if ever wholly himself is so rather in virtue of the most pronounced mannerism than by reason of any truer and deeper originality, belongs to his middle time, after the sojourn in Italy which transformed his art superficially but not vitally. It is doubly interesting, as betraying in the general arrangement, but more particularly in the figures of the dead Christ and the fainting Virgin, a very strong reminiscence of Sodoma's "Descent

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from the Cross," painted as early as 1504, and now in the *Accademia delle belle Arti* at Siena.

Perhaps the most authentic and the most important of all Lucas Van Leyden's works, not excepting even the "Last Judgment" in the Town Hall of Leyden, is the triptych at the Hermitage, "The Miracle of the Blind Man of Jericho." This was executed—as Mons. de Somof tells us in his admirable catalogue of the Netherlandish schools—about 1531, but two years before the death of the Leyden master. His authentic oil paintings are few, and they are prized accordingly as great rarities. The most notable among them—other than the "Last Judgment" of Leyden, and a stolid, ungainly "Adoration of the Magi," at Buckingham Palace—are to be found in the Berlin, Munich and Brunswick Galleries, and at Wilton House, the seat of the Earl of Pembroke. The best of these paintings is the charming "Madonna and Child with Angels" in the Berlin Gallery. The St. Petersburg picture, with all its elaboration, with all its technical completeness in its own peculiar style, proves Lucas to be—what he ever was, if not as a draughtsman and engraver, yet as a painter—an artistic individuality most unsatisfying, most provoking in its limitations. The greatest qualities of Netherlandish art are, perhaps, its pathetically human and therefore essentially noble realism, intensifying every-day fact and every-day people until naïveté and ruggedness become pathos and grandeur; its power to individualize to the highest degree the human physiognomy, and yet to present without loss of vitality its immutable character as well as its most characteristic phases of expression. These qualities we do not find at their highest in Lucas Van Leyden, who is above all a facile and powerful, though he is as a rule an unmoved narrator. We cannot rank him with Jan Van Eyck, Roger van der Weyden, Hugo van der Goes, or Quentin Matsys among Netherlanders; still less can we compare him, even where he most unquestionably triumphs, to his mighty contemporary, Albrecht Dürer—a poet-painter veritably inspired, the very asperity of whose realism adds to great inventions a poignancy of expression to which no other artist has attained in the same degree. There is nothing from Dürer's hand in the Hermitage, which is, indeed, noticeably poor in examples of German as distinguished from Netherlandish art of the nineteenth century. No original represents in the Imperial collection Hans

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Holbein the younger; but a very interesting "Portrait of a Young Man," dated 1518, and bearing a monogram compounded of the letters A. H. and B., serves to remind the student of this period that his little-known brother Ambrosius, who died too young for complete development, was yet an artist of distinction. There is nothing again by Christoph Amberger of Augsburg, who must, after Holbein, but in a path completely his own, count as the greatest German portrait-painter of the sixteenth century. Lucas Cranach, on the other hand, the most German of Germans, and the Teutonic painter of the Renaissance who is least profoundly affected by Italian art, shows to great advantage at St. Petersburg. We have there* the "Venus and Cupid" dated 1509, and thus one of the earliest recognized pictures of the master, the first with a date being the beautiful "Repose in Egypt" of 1504, now belonging to the famous orchestral conductor, Hermann Levi of Munich, in which the painter, then already, be it remembered, in his thirty-second year, attained to a perfection hardly again realized. The "Venus and Cupid" is something of an exception in the life-work of Cranach, seeing that it is strongly tinged by Italian—seemingly late Quattrocento—influences. Considerably later in style is the beautiful "*Vierge au Pommier.*" The "Portrait of Cardinal Albert of Brandenburg," one of the sitters whom Cranach most delighted to honor, is less interesting than the curious piece at Berlin, in which he is represented by the same artist as St. Jerome, or that other genre-portrait—if the expression be permissible under the circumstances—in which the Cardinal again nominally fills the great rôle of the Church father, but this time has been comfortably established by Cranach in his study, after the fashion familiarized by Catena in his well-known picture in the National Gallery, and by Carpaccio in that delightful study of a Venetian interior which is one of the best-known decorative canvases in the Oratory of San Giorgio de' Schiavoni, at Venice.

We must now make a great leap and go straight to Rubens, remembering, if certain gaps in the magnificent ensemble should excite wonderment, that in the Hermitage we have less a museum formed for the purposes of public instruction than a collection brought together from reign to reign on the principles which guide the amateur, though it bears the

* Actually at the time of writing, together with the "*Vierge au Pommier*" from the same hand, in the Cranach Exhibition at Dresden.

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same relation to that of the private dilettante, however splendid, that the Imperial means bear to those of the individual even under the most exceptional circumstances. Restrictions of space render impossible even a bare enumeration of the sixty examples attributed by the catalogue to the *chef-d'école* of Antwerp, and of which an unusually large proportion are really from his own hand. In very few, if any, among the European galleries is Rubens more finely, more variously, or more completely represented. True, to appreciate him adequately as a painter of sacred subjects one must still go to Antwerp and to Vienna; to see the vastest group of canvases by himself and his school one must visit the Alte Pinakothek of Munich and explore its central hall and the adjacent galleries. His prodigious power—especially throughout the later years—in the treatment of radiantly blonde, exuberant nudities and cascades of pale, golden hair is best appreciated at the Prado Museum of Madrid. The Louvre, the National Gallery, the Berlin and Dresden Galleries, the Liechtenstein Gallery at Vienna, the Uffizi and the Pitti contain famous specimens of his art, which must be known if he is to be understood in all his variety and unity. Blenheim was, before the dispersal of its treasures, a store-house of Sir Peter Paul's pictures; Grosvenor House, the town residence of the Duke of Westminster, is so still. The much-vaunted "Rubens Room" at Windsor Castle is, on the other hand, something of a *désillusion* to the true Rubens-worshipper, who is not to be put off with anything but the very finest. Its portraits of the master himself and his first wife, Isabelle Brant, are famous, but the great canvas, "St. Martin Dividing His Cloak with a Beggar," which stands forth as its chief attraction, is now universally accepted by connoisseurs as an early Vandyck, painted like the very similar but not identical altarpiece at Saventhem before the *Wanderjahre* in Italy. The great masterpiece, which above all others adds lustre to the Russian Gallery, is the "Jesus in the House of Simon the Pharisee," from the Houghton Hall (Walpole) collection. Painted between 1615 and 1620, it belongs to the maturity of the middle period, and it is manifest that it contains much of the handiwork of the youthful Vandyck, in that period of splendid promise and performance which preceded the partial transformation of his art under the influence of the Italian Cinquecentists and Seicentists. In no sacred work of Rubens is a rhythm so noble and harmonious

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in its sweep combined with an expression of the emotions so natural and spontaneous in its passion. The characteristic exuberance is preserved, the irrepressible *joie de vivre* forces its way everywhere to the surface. Yet the tremendous dramatic force of the conception, the supreme pathos of expression in the two chief figures, Christ and the Magdalene, lift the work as a whole high above the level usually attained even by Rubens. He here sacrifices nothing of himself—indeed of any abdication of personality he was always, even in youth, incapable—but his genius glows with an ardent flame such as, in his life-work, illumines only a few exceptional masterpieces. The Hermitage shows also a fine copy of this picture, variously ascribed to Jordaens and to the youthful Vandyck, but more probably by the latter. An important "Descent from the Cross" bearing a family resemblance to the world-famous triptych in the Cathedral of Antwerp, yet in no respect identical with it, comes from the collection of the Empress Josephine at La Malmaison. M. Max Rooses in his justly famous work, "*L'Oeuvre de Rubens*," gives the opinion that it surpasses all other versions of the subject by the Antwerp master, save only the one just now referred to. A great portion of the canvas, which dates from 1613 or 1614, is from the brush of the artist himself. The "Venus and Adonis," though the hand of Rubens imparting brilliancy to the whole is visible enough in it, serves chiefly to betray the vulgarities of his style when he approaches the Olympians, even from their most earthly aspect. Titian is well-nigh as realistic, quite as human as his Flemish successor; yet how the sensuousness of the Venetian is tempered, even in his least imaginative works, with the poetic sense that in youth and beauty warm with love we have a noble, not an unworthy thing! Infinitely more attractive, and, indeed, a masterpiece of execution, is the "Perseus and Andromeda," not to be confounded with the fine picture, of the same period (1612-1615) and the same subject, in the Berlin Gallery. Yet even here we are not in the realm of the poet-painter. Though the subject is expressed with the superb vigor proper to Rubens, we find underlying this the pompous superficiality, the turgid rhetoric of the seventeenth century. Nothing short of astonishing in the brutal yet irresistible force of the rendering is the "Bacchanal" (Walpole collection), in which a drunken Silenus is seen sustained by a female Faun, a negress, and the god Pan. Hardly

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ever has the brush of Rubens worked with more solidity or a more elastic strength, with more breadth and finish combined. In such pieces as this and many another Bacchanal, in the great "Kermesse" of the Louvre, the "Worship of Venus" of the Vienna Gallery, the too-little known "Worship of the Many-breasted Goddess" (?) of the Glasgow Municipal Gallery, what would be intolerable grossness and indecency in another becomes pardonable, nay even acceptable, in Rubens, as an overwhelming representation—ruthlessly realistic in expression and yet all the same mainly symbolical—of the teeming forces of Nature. To this same class belongs the superb "Bacchus" painted entirely by the master-hand the original of a well-known picture in the Dresden Gallery. An amusingly naïve incident in this composition, which will be recognized without further description, is borrowed almost textually from the splendid Bacchanal of Titian which adorns the Prado Museum of Madrid.

CLAUDE PHILLIPS.

(*To be continued.*)

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THE REBELLION AGAINST THE ROYAL SUPREMACY.

BY THE EARL OF PORTSMOUTH.

WHAT we now speak of as the "Supremacy of the Crown" in matters ecclesiastical as well as civil represents a movement whose development has been both interesting and of very ancient origin. In the Middle Ages the genius of the theologian inspired the direction of European affairs. The Crusaders, in their spirit and in their enthusiasm, were purely religious; and although, even in the religious wars, secular ambition made use of religious excitement—and it may be said that, in a very considerable degree, the passion and lust for territorial and secular aggrandizement were commingled with ecclesiastical fanaticism—yet it was not until the Reformation, when the old superstitions had been enfeebled by the spirit of doubt, that human judgment, and law, as the highest embodiment of that judgment, asserted and obtained the supremacy. At that time, the Inquisition, by its frequent hostility to the Civil Power, no less than by its outrages upon the natural kindness of human nature, had exemplified the political objection to ecclesiastics uncontrolled by and irresponsible to Civil authority.

On the other hand, the theory that the Church is superior, and not subordinate, to the State did tend towards liberty, during the period when the Papal power was most elaborately organized, and before the Reformation. Constitutional government, the restraints of modern thought, together with the emancipation of the human intellect, were not then in existence. The great principle at issue was not the right of the people, but the conflicting claims of a temporal sovereign and of the Pope. Nations had not learned to be their own

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masters, but they had learned to acknowledge two different masters. As a set-off against the brutal despotism of illiterate and barbarian monarchs, was the influence—not necessarily religious, but certainly more cultured and more humane (in the classical sense of that word)—of the mediaeval Popes. The Popes, in their manipulation of the political drama, were moved, and often to good purpose, towards taking the popular side of the people against ignorant tyranny. In England the questioning of Papal Supremacy grew; in the first place, out of the natural political inconvenience that resulted from the Pope's right to annates and other exactions. Henry the Eighth was impelled, in the first instance, towards the Reformation by the opportunity it offered to get rid of that interference with his will and rule, which, working in consonance with all the instincts of a healthy English common sense, was intolerant of opposition, as it was of ecclesiastical intrigue. The Tudor temperament hated subterfuge and mediaevalism; but the religious aspect of the State Supremacy it cared very little for. As in all great movements, however, the force lay in the religious side; and the King, without any reluctance, used that to strengthen him in his assertion of political independence.

When Constantine embraced Christianity, the dignity and position of the chief city of the Empire caused Rome to be accounted the first see; but the earlier Councils of the Church show that the idea of independence from Roman centralization was then prevalent.

By the General Council of Nice it was declared that the Patriarchs of Alexandria and Antioch had the same discipline and authority over the countries that lay round about them that the Pope of Rome had over those that lay about that city.

In the second great general Council, to guard against the effect of the appeals to Rome which arose from the growth, in the Eastern Churches, of the Arian heresy, it was specially decreed that every province should be governed by its own synod, and that clergy, when they were accused, must first be judged by the Bishops of their own diocese, that from these they might appeal to the Bishops of the province; but no higher appeal was allowed. In a council of Milevi, in which St. Austin sat, it was decreed that every clerk that should appeal to any Bishop beyond the sea should be excommunicated.

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Alongside of this refusal to recognize the Bishop of Rome as supreme Pontiff, arose the contest and controversy, from the time when Constantine became a Christian, between the Eastern and Western Churches.

The Emperor Mauritius declared the Patriarch of Constantinople "the universal Bishop." Gregory the Great promptly retaliated by denouncing that assumption of pre-eminence as betokening an ambition equal to the pride of Lucifer. He declared that he who assumed such a title was the fore-runner of anti-Christ, and he went on to say that none of his predecessors had ever claimed such a power.

That Gregory the Great admitted that he was not supreme Pontiff has a specially significant bearing upon the English case; for it must be borne in mind that he was Pope, and therefore the representative of Catholic claims, at the time when the conversion of the British to Christianity took place.

It is also instructive to remember that the Popes still, when they are consecrated, promise to obey the first eight General Councils, which decided against the Ultramontane theory; as there is a large portion of the English clergy who, in spite of the plain language of their oaths and the Prayer Book, assert the pretension of a power beyond the control of Parliament.

The supremacy of the Crown may be said to have resulted from the embracing of Christianity by the Emperors. In the digest of Roman law which was so fully made by Justinian, many new constitutions to control ecclesiastical causes and persons were introduced. In several cases, the General Councils were summoned by the Emperors: in others, they were presided over by an Emperor. The Popes, in some cases, wrote letters to Emperors to ask them to summon Councils; and the Councils desired Popes to confirm their decrees. Pope Hadrian went so far as to decree, in a synod, that the Emperor should choose the Pope.

In England, the Norman Conquest heralded an open declaration of royal supremacy. William the Conqueror, it will be remembered, to immortalize his victory over Harold and to place himself in the most favorable light towards the clergy, established, on the scene of his victory, an abbey, which he called Battle Abbey. In the charter which he granted to it, he made use of these words: "It shall be also free and quiet forever from all

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subjection to Bishops or the dominion of any other persons, as Christ's Church in Canterbury is."

But, perhaps, there was no force during the Middle Ages that prepared men's minds more fully for the principle of the royal supremacy, which spells the Reformation, than Wycliff and the Lollards. As Mr. Trevelyan, in his most interesting book, reminds us, the English mind moves slowly, cautiously and often silently. Between the Lollard and the High Catholic position, between the exhortations of the bold and uncompromising exponent of heretical opinion, of a preacher who tore to shreds the garments of tradition and dogma, and the conventional and frigid directions of the orthodox confessional, there existed shades of opinion and many homes of rest in which, if our ancestors at all resembled their descendants, their minds must have loved to lodge.

The murder of Becket created a revulsion, leading to that exaltation of ecclesiastical authority which made the founder of the Plantagenet monarchy confer "benefit of clergy." Under that strange privilege, criminous clerks—whether parish clergy, monks, friars, teachers or ordinary clerks—found the most effectual immunity for their misconduct; indeed, the protection against punishment which it offered attracted great numbers into the Church, and united them into a sort of band of outlaws against those who were less favored. Wycliff, in his struggle to base religion on the Bible instead of on Catholic tradition, was not only undermining the mediaeval idea as to the pardon of sin, but the clerical view, which maintained the idea of a separate caste. The Supremacy of the Crown in England meant, in those days, the freedom of the individual from ecclesiastical interference. In 1382, the Commons declared "that it was not their intention to be tried for heresy, nor to bind over themselves or their descendants to the prelates more than their ancestors had been in times past." In fact, during the struggle of the Lollards, the Knights of the Shires repeatedly asserted their determination to maintain their independence from clerical interference. The methods of those ages were rough and ready. Perhaps we cannot have a better example of the free spirit which then existed in England than what took place under the name and authority of the Earl of Somerset, who was one of the greatest, if not the most important of the Lords

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of the Red Rose. His tenantry repudiated all ecclesiastical jurisdiction, dismissed their priest, beat the Bishop's officers when they interfered, and even buried their own dead.

Thus, Luther found, in England, men's minds accustomed to spiritual independence and, through Wycliff and the Lollards, to forms of religion fundamentally at variance with mediaevalism. Had the ground not been prepared, the seed could not have so rapidly ripened. It would be impossible, for instance, to conceive of any affinity between the mind of a Crusader and that of the average layman of the Tudor, or even the Stuart, period.

To come to the time immediately preceding the Reformation.

The Royal Supremacy implied no mere abstract constitutional right, but a practical and immediate means of getting rid of oppressive proceedings under the heresy laws. A complaint had been made by the House of Commons against the Bishop of London, in 1534, for using cruelly in prison one Thomas Philips, upon the suspicion of heresy. As the House of Lords failed to pay proper attention to their complaint, the Commons passed through their own House a bill, which speedily became law, repealing the statute of Henry IV. by which Bishops, upon suspicion of heresy, might commit anyone to prison. It was declared that henceforth no proceedings should take place except upon the initiation of two witnesses in open court, and that no punishment should be enforced without first obtaining the King's writ. Before that time, ecclesiastical courts and jurisdiction had, for many years, been systematic engines of oppression and suppression of the truth. Sir Thomas More, whose noble death has obliterated, if it has not largely condoned, the recollection of his acts, was especially active in this direction. The circulation of Tyndall's translation of the New Testament was stopped in every way that was possible. In fact, More sneered at the new preachers, as finding followers among the poor and other illiterate persons. He well merited the retort which he received, that to worldly ecclesiastics and divines our Lord would have appeared in the same light as He did to the Pharisees, as a teacher of dangerous and subversive doctrines. Men and women were taken and tried in Sir Thomas More's house at Chelsea, and burned for their principles. With the habitual contempt of the sacerdotal mind for lay opinion, the clergy took

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no notice of a petition of the House of Commons to the King for redress from the arbitrary proceedings of the ecclesiastical courts. They persisted in their extreme courses. Hoping to strike terror among the gentry, they caused James Bainham, a gentleman of the Temple, to be brought before More, who had him whipped in his presence and then taken to the Tower and racked before his eyes. The man was finally burned as an obstinate heretic.

With the death of More, the lives of the poor preachers were saved. The last man who was burned under the old ecclesiastical jurisdiction was Frith. Frith was a fine scholar and wrote a most interesting paper upon the Sacrament. His prosecution was set in motion by an evily-disposed associate, who conveyed a paper, in which Frith had summarized his opinions, into the hands of Sir Thomas More. Frith expressed then the view which represents the philosophical attitude of reasonable English Churchmen now. He thought that there should be no controversy about the manner of Christ's Presence in the Sacrament; that, whatever opinion men held in speculation (provided such opinion did not encroach upon the domain of practical error, such as the adoration of It, which he looked upon as idolatrous), there should be no fierce disputes about it. He deprecated the fierce controversy that was then raging between the Lutherans and the Zwinglians. He held that, in this, the greatest of all mysteries, where the objective and subjective, the natural and the supernatural, are so inextricably commingled, every man should be able to hold his own opinion without making a breach of the unity of the Church.

While the forces of human freedom were making the King supreme in all matters, the political condition of Europe was attracting the King towards the Reformers. The Emperor and the Pope had conspired for an invasion of England and a subsequent division between them of universal empire. Henry's allies in Europe were the princes of Germany and the offensive and defensive league, at Smalcald, for the freedom of religion and the rights of the Empire.

One must not omit some reference to that most remarkable of all human societies—the Society of Jesus. The Jesuits represented, and indeed were, the intellectual weapon of the ecclesiastical polity, to maintain the supremacy of the papacy, and to

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depress the authority of the sovereign, as being of divine right. Suarez, in a most interesting and remarkable book entitled *"De Fide"* (which, by the way, the Parliament of Paris ordered to be burned in 1614), evolved views completely in consonance with the doctrine of the "Social Contract." The Jesuits were watching, with intense alarm, the movement among the European sovereigns to embrace, for political and popular reasons, heretical opinions. It is not unnatural, therefore, that assassination, which in those days was the speediest means of altering or checking the stream of political events, should be justified, and even recommended, in the book, the object of which is to place the Papacy upon a supreme pedestal of ascendancy both as a moral and a practical force. The Pope is to be the embodiment of all government; but the sovereign is proportionately lowered in prestige and estimation, and he is to exercise his power and his authority, not as one anointed by God, according to the Anglican theory of the Caroline divines, but as the minister of his people.

"If the King fails in his duty, his crown and even his life are to be forfeited for, and by, his people." *"Ergo quando republica juste potest regem deponere, recte faciunt ministri ejus regem cogendo vel interficiendo, si sit necesse."* The Jesuits were not only inspired with the desire to weaken the authority of liberal-minded sovereigns, but, when we remember the very remarkable tenets that are contained in a book which was published at the end of the sixteenth century, by Stephanus Hojeda, who was at the time Visitor of the Jesuits in the province of Toledo, they seem to have evolved, as the strongest basis for Roman Catholicism, the broadest democratic principles. Classical allusions then formed the traditional standard for literary conception. One is not surprised, therefore, to find in this book much reference to the difference, which the Schoolmen had drawn on the model of Aristotle, between a king and a tyrant. In this book, *"De Rege et Regis Institutione,"* it is argued, with great subtlety, that a sovereign who belonged to the class of tyrant did not possess any claim to the name of "king;" nor had he any right, having regard to the fact that he had, by his conduct, placed himself in opposition to the welfare and well-being of his subjects, to possess either the privileges or the respect which belong to the sovereign.

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Political objects produce strange combinations. While the Jesuits were, by their literature, sowing in men's minds the seeds of political liberty, Sixtus V., inspired with the feelings of his cloth, publicly pronounced the assassination of Henry III. by Clement as the work of Providence, and, with more enthusiasm than good taste, compared it to the Incarnation and the Resurrection.

No contrast is greater than that between the teaching of the Jesuits and that of the Gallican Church. The French Church was rich, deeply interested in great revenues, in the most extreme and offensive forms of the rights of property, possessed of, and using in the fullest degree, the most odious political privileges. Its material welfare was attached to the glory of the French Crown and Court; and, although it did more than anything else to produce the Revolution, which destroyed both, it had lost all political, as well as spiritual, instinct, and had become the handmaid and appanage of the French monarchy.

In the Middle Ages, the theory that the Pope had the right to depose sovereigns, for reasons which I have already alluded to, tendered, on the whole, to the improvement of the people; especially as the people had no constitutional authority, and what was taken from the Popes was always given to the sovereign. The teaching of the Gallican Church, like that of the Anglican Church under the Stuarts, exalted the sovereign into a sort of representative of the Deity. Bossuet, who is perhaps the most eloquent writer in support of the Gallican theory, maintained the most extreme view of Divine Right. The sovereign ruled under the immediate authority of the Deity, and, consequently, above and beyond the intervention, either of the Pope or of his own people; obedience, absolute and abject, is the sole duty of the governed; and against tyranny and oppression there is no remedy, except a providential change in the mind of the sovereign. In France the State became the sovereign, and the sovereign also became the Church. To an exaggerated degree, therefore, the attitude of the Church there depended upon the course of current events. The influence of the Church, as a religious force, moving men's minds upon the relations between Church and State, was more affected than anything else by the great change, which was gradually taking place, under which theology ceased to assume an ascendency over politics.

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I have endeavored to show that the rights of the sovereign over ecclesiastical matters produced strange alliances in different countries, at different times, in Europe. From truth to liberty, and from liberty to truth, there has run a steady stream; but that stream has owed its vitality, through varying external circumstances, to one underlying, consistent principle—the revolt of the human intellect from the trammels of mediæval superstition. The Jesuits, the Gallican Church, no less than what is broadly described as the forces of the Reformation, made reason, and not tradition, the motive spring of action.

In England, unlike other countries, the State Establishment, as settled at the Reformation, was not effected contrary to religion, although it was brought into force in opposition to both the Bishops and the clergy. The genius of the English character is its independence. The Bible seems to have added to it strength and earnestness. At critical periods in English history it has afforded a text and a principle for revolt against authority. Just as it stiffened the backs of the Covenanters and the Puritans, it dominated the masterful spirit of the great Tudor sovereigns. The only Bishop whom Elizabeth could get to crown her was Oglethrope of Carlisle. All the Bishops except one were deprived of office by her, for refusing to take the oath of supremacy.

It lay, not, she said, in her sister's power to bind her and her realms to an usurped authority as Joshua declared, "I and my house will serve the Lord." So she and her realm were resolved to serve Him; and she would esteem all her subjects as enemies to God and to her, who should own the usurped power of the Bishop of Rome.

From the time of Elizabeth to the religious movements that took place within the Church during the early part of this century, the Church of England rested for its authority upon the support of the aristocracy. The Tory conception of the Royal Supremacy became an exaggerated theory of the Crown, as of Divine Right. It is unnecessary to refer, except in passing, to the great struggle and complete victory that the Whigs won for popular liberty in putting an end forever to the theory of Divine Right. The Crown means, at the present day, Parliament. Those who now rebel against the Royal Supremacy really desire an ecclesiastical autocracy, with State endowments, but without

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State control. No one who has carefully studied the legal as well as the political arguments that were debated at the time of the Disestablishment of the Irish Church can maintain that the great historic endowments of the Church of England are either held on trust or are other than property, "*de jure*" as well as "*de facto*," alienable for whatever purpose Parliament may decide. Those who aim at destroying the Royal Supremacy are, in the main, convinced that disestablishment means disendowment. The view is, indeed, prevalent, among a large class of religious men, that the overthrow of the national establishment would be beneficial to pure and undefiled religion; that government ought to exercise no choice in matters of faith, but leave every man, without advice, or aid, or influence from that source, to choose for himself; but, fortunately, neither theorists nor philosophers have ever counted for much in England. We have never acted from servile obedience to any dogmatic and determinate theory. The Church of England, in the country districts, supplies a want which could not otherwise be met, and where the parson has not become a modern priest, he has co-operated both with the country squire and the Nonconformist minister. The Church is nearer disestablishment than it ever has been, not on account of the improved organization of the Nonconformists, nor of the fact that it has lost, in Mr. Gladstone, its most effective defender, but because those within the Church are making a determined attempt to destroy its Protestant and Parliamentary character, and there is no confidence among the Protestant laity that they have the sympathy or support of the Bishops.

It is impossible that any established Church—least of all the English Church—can exist without the moderating influence of the Crown. In the coronation oath, the sovereign promises "to maintain the laws of God, the true profession of the Gospel, and the Protestant Reformed Religion established by the law." The jurisdiction of the Privy Council has been nothing more or less than the interpretation, by the highest legal tribunal, from time to time, of whether certain practices are, or are not, in accordance with the Protestant Reformed Religion established by the law. The maintenance of the Coronation Oath is the duty of the Privy Council. This function the Council has exercised and protected the Church from the unrestrained, emotional and partial aspects of the different schools of religious thought.

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The relations between the Church and the State being of a compound character, the Church having become an estate of the Realm, it is essential that there should exist a supreme authority, which is neither purely ecclesiastical nor purely civil. Allow me to take a simple example. If a bishop rejected a candidate for a living upon ecclesiastical grounds, he would be acting in accordance with his proper spiritual authority; but, if he did it upon arbitrary grounds, or on non-ecclesiastical grounds, he would not; because, under the State establishment, the appointment to a living carries with it, not only spiritual duties, but certain definite, civil emoluments. Inasmuch, again, as a living is a freehold, and the freeholder cannot be deprived without process of civil law, it is essential that the law of the Church shall be subject to the law of the land and that the freeholder shall be amenable to that general law. In the English Church, civil and ecclesiastical consequences are intermingled: consequently, there exists the necessity for the mixed authority of the Crown to represent both, and, as a condition, that the sovereign shall be a member of the Church.

In the Church of England, civil and ecclesiastical consequences being thus inextricably commingled, the supremacy of the Crown represents the necessity for that mixed authority which shall have sympathy with both and yet be able, without bias, to decide between both.

In the Church of Rome the supremacy of the Pope implies Councils and all the various restraints of civil and ecclesiastical polity. He cannot be a law unto himself, like our modern parochial popes. The rebellion against the Royal Supremacy means more than any abstract religious theory; it carries with it practical consequences of the most far-reaching effect. The Established Church is inconceivable without the Supremacy of the Crown, just as the endowments of the State are without the State Establishment. From custom, from habit, from tradition, the Protestant Church of England is accepted by a democracy; but a new Church, a sacerdotal autocracy, will have to appeal to different clients. With the empire of dogma and superstition at an end, is priestcraft likely to obtain better results and more support in England than it does on the Continent?

PORTSMOUTH.

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HOW THE RITUALISTS HARM THE CHURCH.

BY THE RT. HON. ARTHUR J. BALFOUR.

It has ever been the boast of the Church of England that it is comprehensive. But a comprehensive Church means a Church which permits wide differences of opinion within its limits, and such differences can hardly exist without occasionally leading to internal dissensions.

It is to the antagonism between the High Church party and the Low that, in the past, dissensions have been chiefly due. The parties themselves date back, by an unbroken succession, to the Reformation controversies; and though, doubtless, each has undergone important modifications in the course of three centuries of development, yet their continuity remains; and, as in the time of Queen Elizabeth, they judge the ecclesiastical system, which both accept, by widely different theological standards. Where divergencies of this magnitude exist, the materials for inflammatory controversy are ready to hand. It must happen from time to time that the peculiar tenets of one school are, by a few of its members, exaggerated and pressed to their extreme consequences; and, when this occurs, suspicion and resentment are inevitably bred in the other. There then arises one of the "crises" which from time to time disturb the peace of the Church.

Through one of these "crises" we are passing at the present moment. A section (I believe a relatively small one) of the High Church clergy seem bent on proving their "catholicity," by imitating as much of Roman ritual, and absorbing as much of the Roman doctrine, as is compatible with remaining in a communion which the Church of Rome has declared to be schismatic. The results are what might have been anticipated by any one at all acquainted with the ecclesiastical history of Great Britain. Prot-

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estant feeling is violently aroused. Religious controversy ceases for a time to be the concern chiefly of theologians; it overflows abundantly into the newspapers; it attains a rank growth on platforms and at mass meetings. Like everything else which deeply stirs the public mind, it finds its echo in Parliament; and, to the despair of those who know how difficult and delicate are the questions in dispute, it becomes the business of speakers whose religious sentiments may be above reproach, but who cannot in all cases be either learned historians or trained divines.

A speech, the substance of which the Editor of the NORTH AMERICAN REVIEW desires should be reproduced for those American readers who take an interest in the fortunes of the Anglican Church, was delivered (with a reluctance due to the reasons just noted) by the present writer in one of the debates which thus arose in the House of Commons. Its immediate occasion was a Memorial issued on the authority of a body drawn from a section of the High Church party, known as the English Church Union. This document, which does not seem by any means to represent the views of all who belong to the society which adopted it, gave, in my opinion, just offence to public opinion. It was all held to justify the accusation of "lawlessness" levied against the extreme ritualists. Its general tone was certainly not calculated to allay controversy; and some of its statements seem wholly inconsistent with loyalty to the Church of England. Under these circumstances a motion was brought forward in the House of Commons attacking the English Church Union by name, and deploring the spirit of "lawlessness" shown in its Memorial. To this an amendment was proposed, not differing in spirit from the original motion, but omitting all specific reference either to the English Church Union or to its Memorial. It was in support of this amendment that the speech was delivered.

I began by repeating what I have said on other occasions—namely, that the danger which the English Church is now incurring, and the divisions from which it is suffering, are not questions merely, or even principally, of technical obedience to the law; they are questions of loyalty to an institution. It is for this reason that I do not believe any effectual remedy can be found for our present troubles, by merely increasing the stringency of existing remedies against lawlessness. It is for this reason that I so deeply deplore the recent enunciation of policy by certain mem-

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bers of the English Church Union. Of the many criticisms which have been passed upon this document, the one which is at once the most deserved and the most damaging is that it enunciates principles wholly inconsistent with loyalty to the Church of which its framers are members. I refrain from going beyond this statement. I do not say, for instance, that these gentlemen are guilty of what is commonly called Romanizing. I do not use that phrase, because I understand that they have themselves asserted that they do not agree with the defined doctrines of the Roman Church; that they do not agree in all points with its discipline or ritual, and that they are not prepared to accept the principles of Papal supremacy. Therefore, I do not charge them with Romanizing; but I do charge them with a desire so to alter, both in its forms and in its spirit, the traditional character of the Church to which they belong, as to make it practically unrecognizable by its most distinguished and most loyal sons for three centuries; and I hold that this desire, however honorable in its motives, however disinterested—and I believe it to be both honorable and disinterested—is not consistent with loyalty to the Church of England.

Now, I have often asked myself why it is that the great body of the High Church party, who are undoubtedly loyal to the Church, who undoubtedly have their legitimate place within its fold, have not frankly joined with other moderate sections in the Church, and openly dissociated themselves from the school of thought which I have ventured to indict in language perhaps strong, but certainly not stronger, in my judgment, than the facts of the case warrant. I believe the reason is that, in addition to their distinctive doctrines (on which I shall have more to say in a moment), the English Church Union have championed with great force two important doctrines from which I, at all events, do not dissent, and which, properly interpreted, I think are not only religious truths, but I had almost said religious truisms. One of these is that the members of the English Church belong not only to the English Church, but to the Church Universal; and the other is that the English Church, though it be an established Church, nevertheless has, and ought to have, a spiritual independence of its own. These are two principles which I do not believe are denied by any important section of opinion.

I have heard certain individuals described as Erastians, and there may be Erastians among us. But there is no school of Eras-

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tianism among us. I believe there is no large body of educated opinion worth considering which does not recognize, as certainly I recognize, that for any religious community to regard itself as a mere Department of the State—a religious branch, as it were, of the Civil Service—is to abandon all hope of spiritual growth, and to expose itself, unprotected, to the most deadening of unspiritual influences. But, personally, I am quite ready to go further. I am one of those who have always desired to see greater spiritual autonomy given to the English Church. It may be that, being a Scotchman, living in Scotland, and seeing how the Established Church of Scotland is constituted, and how it works, I am prejudiced in favor of giving to the sister Established Church those liberties which the Scottish Established Church enjoys.

But, if there are grounds for desiring a reform of the Church of England, in the direction of giving greater autonomy to Convocation, and greater power to the laity, who are the obstacles to such a reform being pressed forward by all sections of Church opinion throughout the country, High, Low and Broad? They are the people who, like Lord Halifax, and those who follow Lord Halifax, make no secret of the fact that they regard the history of the Church of England for the last three centuries as an unprofitable parenthesis in the history of the Church Universal, and who frankly admit that they would like to see the ritual of the Church modified in a sense which would bring it, if not into absolute conformity, at any rate into very close agreement, with the ritual which existed in the Church of Rome in the immediate pre-Reformation days. I think I am not distorting the sense of the English Church Union declaration. If those paragraphs mean anything, they mean, in the first place, that the English Church has no tradition of its own worth consideration in the matter of ritual. In fact, that, I think, is stated in terms:

> "A Church which, prescribing a service for Ascension Day, . . . has yet for long periods of time acquiesced in a general neglect of Ascension Day, has no continuous tradition or practice which can be appealed to as evidence of what it enjoins or forbids."

That is their first proposition. Their second proposition is that, on *a priori* grounds, they are convinced that the priests who, at the time of the Reformation, became the first clergy of the Reformed Church of England, must have carried into the ritual of that Church the practices to which they had been accustomed,

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while still in obedience to Rome. And their conclusion from these two allegations is, that unless a practice is specifically forbidden by the Prayer Book (they being the judges of that which is specifically forbidden), all these pre-Reformation practices are not merely permissible but praiseworthy, and that the Church has no corrective tradition to which appeal may legitimately be made in such a state of things. According to this theory, the clergy of the Church of England have a kind of roving commission to inquire into the ritual practices before the Reformation; and, unless any of these practices are specifically forbidden in terms which commend themselves as binding to their minds, they may introduce them into their services, however great may be the revolution in the immemorial usage of the Church of England effected thereby.

Now, a man may be a very honest and a very good man while holding these views, but he is not, in my judgment, a loyal member of the Church of England; and those who think, as I think, that some increased autonomy may well be given to the clergy and the laity of the Church of England, find, and must find, the main obstacle to the fulfillment of any such policy in the profound and not unjustifiable irritation which the theory I have just explained has produced, and is producing, in that great body of moderate opinion in this country, which, after all, desires to see the Church of England remain what it was in the days of Hooker, in the days of Butler, in the days of the great Evangelical movement associated with the name of Mr. Simeon, and of the great High Church movement associated with the names of Mr. Keble and Dr. Pusey. The men I have mentioned held widely different opinions. All were loyal members of the Church of England. For all of them, the ritual of that Church, as it has been practised from the days of Hooker to our own, has been sufficient; and I think that a good cause cannot be worse served than by allowing the questions of spiritual autonomy, and the fellowship of the Universal Church, to be, I will not say monopolized, but used as the flag of a party which desires evidently to transform, to revolutionize, and, I should say, to destroy the Church of which they are members. I do not profess, myself, to take a very confident, a very sanguine, view of the future of this controversy. I acknowledge that, the more I watch its progress, the more difficult it appears to me to steer the course of this controversy through all the rocks and shoals which surround it; but, if there be a hope—

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and there is a hope—for the future of the Established Church of this country, it lies, and, in my opinion, can only lie, in the firm determination of all men who are sincerely loyal to the worship, the ritual, and the doctrines of the Church of England, to unite, even though there be important differences dividing them upon other subjects, in the resolve that, neither by one set of extremists nor by the other, shall this great Church be torn asunder.

There is one class of the community who make no show in the public papers, who do not appear on platforms, who neither publish letters nor make speeches, for whom I would venture to plead. After all, while we are disputing about ecclesiastical matters of relatively small importance, there are vast questions, lying at the very root of all religion, which are being called in doubt by men very far removed from the plane of this controversy. No greater injury can be done to the cause of religion than to compel these men to witness, from day to day, so many ministers of religion apparently absorbed in disputes which, compared with the subjects to which I have referred, are as nothing in the balance.

I grieve to think that there is not merely an injury, perhaps an irreparable injury, being done to the fabric of the Church of England, but that there is an injury being done to the whole cause of religion. That injury can only be mitigated, these dangers can only be met, by the resolve of men of all shades of moderate opinion to work together; and I would appeal to that great body of High Church opinion which I feel confident, does not sympathize with the extravagances and excesses of a small but active school, but which has hitherto stood timorously aloof, afraid lest by declaring themselves against the extreme Ritualists they should be imperilling doctrines to which, they attach the utmost value. I think this abstention most unfortunate. For their wishes never can have practical effect until they have convinced the great body of the laity of this country that by Church reform is not meant a wholesale revolution of Church ritual in the direction of Roman practices, and that the Church, on whose behalf they ask for a larger measure of autonomy, is in spirit, as well as in name, identical with that branch of the Universal Church which, for three hundred years and more, has been doing such magnificent service to the cause of religion in this country.

ARTHUR J. BALFOUR.

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